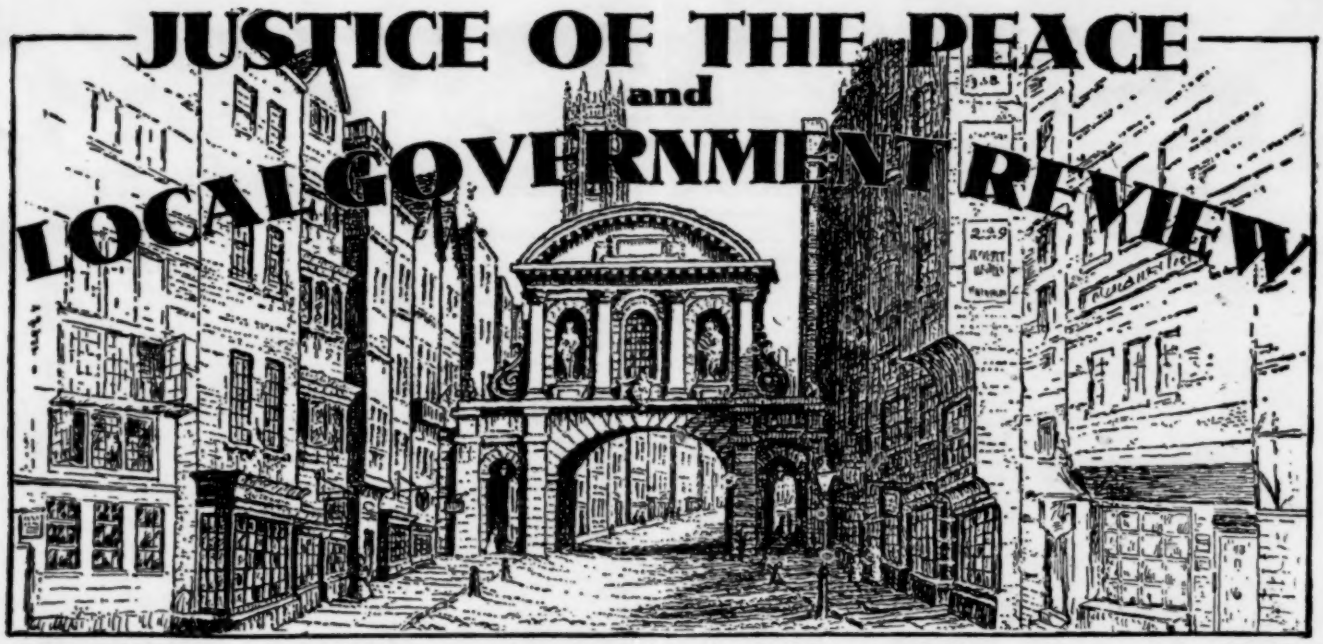

VOL. CXVIII LONDON: SATURDAY, AUGUST 14, 1954 No. 33

CONTENTS

REPORTS

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. 6d. per line and 3s. 6d. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt* **10** ***a.m. Thursday***

Published by JUSTICE OF THE PEACE LTD., Little London, Chichester, Sussex
Telephone : CHICHESTER 3637 (P.B.E.) *Telegraphic Address :* JUSLOCGOV, CHICHESTER

NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note :* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

SITUATIONS VACANT

THE URBAN DISTRICT COUNCIL OF Havant and Waterloo require a Local Land Charges Clerk, Higher Clerical Grade (previous experience in local land charges work essential) and an Assistant Committee Clerk, graded General Division or A.P.T. I according to qualification. Apply, naming two referees, to Clerk of the Council, Town Hall, Havant. Closing date, August 21, 1954.

INQUIRIES

YORKSHIRE DETECTIVE BUREAU (T. E. Hoyland, Ex-Detective Sergeant). Member of The Association of British Detectives, World Secret Service Association and Associated American Detective Agencies. DIVORCE — OBSERVATIONS — ENQUIRIES—Civil and Criminal investigations anywhere. Over 1,000 Agents. Over 27 years C.I.D. and Private Detective Experience at your Service. Empire House, 10, Piccadilly, Bradford. Tel. 25129. (After office hours, 26823.) Established 1945.

COUNTY BOROUGH OF DARLINGTON

Appointment of Deputy Town Clerk

APPLICATIONS are invited from Solicitors with considerable Local Government experience for appointment as Deputy Town Clerk. Salary £1,250 rising to £1,450.

A form of application can be obtained from me and applications must reach me not later than noon on September 1, 1954.

H. HOPKINS,
Town Clerk.

11, Houndgate,
Darlington.

CITY AND COUNTY OF THE CITY OF EXETER

Junior Assistant Solicitor

A VACANCY exists in my Department for a Junior Assistant Solicitor in Grades A.P.T. Va to VII according to experience.

Applications, giving relevant details, including the names of two referees, must reach my office not later than August 31, 1954.

C. J. NEWMAN,
Town Clerk.

10, Southernhay West,
Exeter.

ABERCARN URBAN DISTRICT COUNCIL

Appointment of Clerk of the Council and Chief Executive Officer

APPLICATIONS are invited for the above appointment from legally qualified persons having experience of Local Government law and administration. The salary and conditions of service attaching to the appointment will be in accordance with the recommendations of the Joint Negotiating Committee for Town Clerks and District Council Clerks of Authorities within the 15,000/20,000 population group.

The person appointed will be required to carry out all statutory and other duties devolving upon him or assigned to him by the Council, and to act as Registrar of Local Land Charges and Returning Officer at Local Elections. All fees, emoluments and payments of any kind (with the exception of the personal fees referred to in the recommendations of the Joint Negotiating Committee) shall be paid to the credit of the Council's account.

The appointment will be subject to the provisions of the Local Government Superannuation Acts, to the successful applicant passing a medical examination and to three months' notice on either side. The successful applicant will be required to take up his appointment as soon as possible.

Applications, in envelopes endorsed "Clerk of the Council," stating age, qualifications, experience, present and previous appointments, and giving the names of three persons to whom reference may be made, should reach the undersigned not later than Monday, August 30.

Canvassing, directly or indirectly, will disqualify, and every applicant must disclose in writing whether he is related to any Member or Senior Officer of the Council.

LEON KING,
Clerk of the Council.

Council Offices,
Abercarn, Mon.

METROPOLITAN BOROUGH OF CAMBERWELL

Law Clerk

SALARY Grades A.P.T. I/II of the National Scales (£520 to £595 inclusive of £30 London weighting). Applicants should have general experience in a legal office. No housing provided. Local Superannuation Act. Application form from Town Clerk, Town Hall, S.E.5. Closing date August 31, 1954.

ESSEX PROBATION AREA

Appointment of Probation Officer

APPLICATIONS are invited for the appointment of a full-time male Probation Officer.

Applicants must not be less than twenty-three nor more than forty years of age, except in the case of a serving probation officer.

The appointment will be subject to the Probation Rules, 1949, and the salary will be according to the scale prescribed by those Rules.

Applicants should be able to drive a car.

The successful applicant will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with copies of not more than three recent testimonials, must reach the undersigned not later than fourteen days after the appearance of this advertisement.

W. J. PIPER,
Clerk of the Peace and of the Probation Committee.

Office of the Clerk of the Peace,
Tindal Square,
Chelmsford.

WARWICKSHIRE COUNTY COUNCIL

Assistant Solicitor

APPLICATIONS are invited from solicitors for the post of Assistant Solicitor in the Office of the Clerk of the Peace and of the Warwickshire County Council. The commencing salary of the post will be £735 per annum, rising by annual increments to £810 per annum (Grade A.P.T. VII). Previous local government experience is not essential.

The appointment is subject to the Local Government Superannuation Act, 1937, and the successful applicant will be required to pass a medical examination.

Applications, on forms to be obtained from the Clerk of the Council, Shire Hall, Warwick, must be received not later than September 6, 1954.

L. EDGAR STEPHENS,
Clerk of the Council.

Shire Hall,
Warwick.
August 3, 1954.

COUNTY BOROUGH OF SUNDERLAND

APPLICATIONS are invited from young men who have completed their national service for the post of Assistant to the Clerk to the Justices for the above County Borough.

Applicants should have had experience of the general duties performed in a Magistrates' Clerk's Office. Ability to type is essential and a knowledge of shorthand desirable.

The present salary of the post is equivalent to the General Division of the National Joint Council Scales, but is subject to review.

The post is superannuable and the successful candidate will be required to pass a medical examination.

Applications, stating age and experience, together with the names of two referees, to be received by the undersigned not later than Monday, August 23, 1954.

J. P. WILSON,
Clerk to the Justices.

Sessions Courts,
Gillbridge Avenue,
Sunderland,
Co. Durham.
July 31, 1954.

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

VOL. CXVIII. No. 33 LONDON : SATURDAY, AUGUST 14, 1954

Pages 508-523 Offices: LITTLE LONDON, CHICHESTER, SUSSEX. [Registered at the General Post Office as a Newspaper.]

Price 2s. 3d. (including Reports)
Price 1s. 3d. (without Reports)

NOTES of the WEEK

Regulations for Cyclists

There has been a considerable demand for the further control of cyclists in the interest of their own safety and that of other road users. There will therefore be approval in many quarters of the Brakes on Pedal Cycles Regulations (1954) S.I. No. 966 which will come into force on September 1.

The regulations prescribe the brakes required on bicycles and tricycles, including children's cycles, and empower police to test and inspect brakes.

In a press notice the Ministry of Transport points out that the obligation to fit and maintain efficient brakes rests not only on the actual user but on those who cause or permit cycles to be used, for instance the parent of a child cyclist. Thus it will be an offence if the responsible person permits a child to use a cycle on the roads with inefficient brakes.

Stopping the Case

It is always a little risky for justices to stop the hearing of a case before the prosecutor or complainant has put the whole of his evidence before the court. Sometimes he may by his own statements make it plain that he cannot succeed, but as a rule it is best to let the evidence be completed so that he cannot say he was not given a full hearing. If he is legally represented and his advocate admits that it would be futile to proceed further, then the justices cannot be accused of stopping the case prematurely, but the unrepresented defendant may not appreciate the position.

In *Avery* v. *Avery* (*The Times*, July 27), a husband had been complainant in proceedings before justices seeking the discharge of a maintenance order. When the order was made he had alleged adultery on the part of his wife but had not proved this to the satisfaction of the justices. Subsequently he applied for the discharge of the order on the ground that he had now fresh evidence to be given by two witnesses. In the course of his judgment the Lord Chief Justice said that the justices had dealt with the application in a rather summary way and had stopped the case saying that there was no fresh evidence. They had, said Lord Goddard, struck too soon. The justices did not know what fresh evidence was going to be given or whether there was a good reason for the husband not asking the proposed witnesses before. An order of *mandamus* would be issued requiring the justices to hear the application.

Costs Against the Justices

The Lord Chief Justice also observed that the justices seemed to have forgotten that in such cases the statute permitted them to file an affidavit in reply. They had chosen to be represented and made themselves parties to the proceedings. Although he was always reluctant to order justices to pay costs, they must do so in this case.

It will be remembered that by s. 2 of the Review of Justices' Decisions Act, 1872, it is provided that whenever the decision of any justice or justices is called in question in any superior court by a rule to show cause, the justice or justices may make and file an affidavit setting forth the grounds of their decision and any material facts, and by s. 3 that the affidavit shall be taken into consideration not withstanding that no counsel appears.

Visiting Forces and the Road Traffic Acts

In a note of the week at 118 J.P.N. 381 we referred to art. 8 of the Visiting Forces (Application of Law) Order, 1954. Three further statutory instruments came into operation on July 22, 1954, as follows : the Motor Vehicles (Construction and Use) (Amendment) Regulations, 1954 [S.I. 1954/942] ; the Motor Vehicles (Variation of Speed Limit) (Amendment) Regulations, 1954 [S.I. 1954/943] ; and the Motor Vehicles (Construction and Use) (Track Laying Vehicles) (Amendment) Regulations, 1954 [S.I. 1954/944].

In each case the new statutory instrument deals with the application of the relevant original regulations, or parts of them, to vehicles in the service of visiting forces.

By S.I. No. 942, regs. 6 to 9, 11 to 13, 15 to 20 and 23 to 71 inclusive of the Motor Vehicles (Construction and Use) Regulations, 1951, as amended by S.I. 1952/1453 and 1953/1872, are not to apply to any " vehicle in the service of a visiting force " defined as meaning a vehicle belonging to the service authorities of such a force and used for the purposes of such a force, and any other vehicle when so used by a person subject to the orders of any member of such a force. We think it unnecessary to detail here the matters covered by the regulations so referred to.

S.I. No. 943, by the addition of the words " or which are vehicles in the service of a visiting force " after " Crown " in reg. 3 (*a*) of the Motor Vehicles (Variation of Speed Limit) Regulations, 1947, includes in the exemptions from the speed limit conferred by the 1947 Regulations visiting forces' vehicles of the same classes as are listed in the schedule to those Regulations.

S.I. No. 944 provides that regs. 5 to 7, 9 to 12, 14 to 19 and 21A to 51 inclusive and reg. 72 of the Motor Vehicles (Construction and Use) (Track Laying Vehicles) Regulations, 1941, as amended by S.I. 1946/2131 ; 1951/2248 and 1953/1873 shall not apply to any vehicle in the service of a visiting force. As in the case of the Construction and Use Regulations referred to above we must leave readers to refer, if necessary to the "parent" regulations to find out the exact effect of this exemption.

A Suggested Gratuity

We noticed at p. 351, *ante*, the different approaches of the business man and the administrator, to the making from funds under their control of gratuitous payments to employees. That was in connexion with a speech in which Mr. Richard Stokes, M.P., expressed himself as aggrieved that when he was a Minister he had not been allowed by the Treasury to give a complimentary party at the tax-payer's expense, to officials whose diligence had saved large sums to the Exchequer. We have lately seen mentioned a broadly similar proposal in local government, it having been decided (it is said) to award to the clerk of a midland district council one-fifth of a large sum saved to the council by his legal acumen. The details as we have seen them are a little hazy. There are precedents in *R.* v. *Gloucester Corporation* (1859) 23 J.P. 709 and *R.* v. *Cumberlege* (1877) 41 J.P. 533, for paying money to an official who has done more than was covered by his salary. But the *ratio decidendi* in those cases was that the work done was outside the scope of the official's duties, whereas (in the case now current) the exercise of whatever legal capacity is possessed by the salaried clerk of a district council is, surely, all in his day's work. *Prima facie*, therefore, the case is nearer to *Lee* v. *McGrath* (1934) 151 L.T. 553, and *Ex parte Mellish* (1863) 8 L.T. 47.

This last was also a case of legal work, exceeding in amount that contemplated by the salary already fixed, but not apparently differing in kind, and it has for ninety years been regarded as settling the principle.

If the district council in the current case make the payment without sanction under s. 228 (1) of the Local Government Act, 1933, they will, we think, certainly find it disallowed. If they apply for sanction under the proviso to that subsection, we shall be greatly surprised if sanction is forthcoming.

Municipal Tenancies and Evictions

The *Yorkshire Post* calls attention to a grievance of tenants of the city council of Leeds, which we suppose (and indeed the paper states) is not unique. This is the elaborate and detailed set of conditions imposed by the council in its tenancy agreements. The specimen printed by the newspaper is, certainly, extremely detailed; it seems to have been based upon the elaborate tenants' covenants to be found in the books of precedents for the letting of residential flats. To the conveyancer, however, the list of prohibitions is less surprising than it was to the writer of the article, or would be to the average tenant if he read the list; the excuse is always made, by a private landlord's solicitor or managing agent, and by municipal officials, that these restrictions are designed to maintain a high standard of amenity and neighbourly conduct. For all that, some of the prohibitions could, we think, be dropped, with no detriment to the landlord or the other tenants. It cannot be essential to insist upon the landlord's permission to keep a cat or a canary, or to give birth to a baby, or even to receive a mother-in-law upon a visit. In fact, every tenant of a private landlord knows that many covenants of this sort are ignored in practice, and we imagine this must be so on municipal estates.

What shall be printed in the tenancy agreements is a matter of degree. The correspondent of the *Yorkshire Post* mentions a more serious matter. This is, that even in the extreme case where an eviction order has to be obtained, the city council's practice is apparently to act automatically upon the advice of the housing manager. Nobody would wish to trouble a committee of the council, or even an official of the highest rank, every time a tenant seeks permission to keep a dog or instal a window box, but when it comes to the point of notice to quit (followed by eviction) this should, we think, be treated as too serious for any official to decide. The correspondent of the *Yorkshire Post* seems to have thought the same, for he states that he put the point specifically to the housing manager and was assured that the procedure was for the manager to report that a tenant was in breach of covenant and recommend eviction, after which the report would be given routine approval by the housing committee—if the words attributed to him mean what they seem to mean. This, if we correctly understand it, seems to us quite wrong. Where a housing manager recommends serving notice to quit upon a council tenant, we consider that specific attention should be drawn to that paragraph of his report. It should be explained in detail to the committee by the chairman, and each tenant's case should be separately voted on, or (perhaps better) there should be a small standing sub-committee of members of the housing committee, charged to examine all proposals to serve notice to quit upon a council tenant, and report to the housing committee, before notice is actually served. The tenant should be given an express right to be heard by that sub-committee.

This is all the more necessary in that, as we pointed out in another context at p. 496, *ante*, Parliament has refused to let council tenants have the protection by the courts which is given to the tenants of ordinary landlords. Seeing that, once a tenancy has been ended by notice to quit, eviction follows as of course, there is the greater need to impose a check at the prior stage. No family ought to be deprived of its house because a municipal official, be he the kindest of men and the best intentioned, has made up his mind that they are unsatisfactory tenants.

Spofforth Hall

The Mayflower Home for mothers who have failed to look after their children properly has for some years been doing useful work in training mothers in their duties towards home and family. This home, at Plymouth, was established by the Salvation Army. A similar home, Spofforth Hall, York, was inaugurated last year by the Society of Friends as an undertaking of the Elizabeth Fry Memorial Trust.

The second annual report, just issued, is the first report upon a full year's work. Outside decoration and other work which was expected to cost £500 was completed at about one third of that figure. The Home benefited much by the stay of three weeks by a work camp bringing enthusiastic young people from England, America, Spain, Germany, Holland, France and Sweden. A York firm provided all the necessary equipment, and undertook to paint whatever parts of the building would be dangerous of access to inexperienced painters and gave expert supervision and advice to the volunteers.

During the year covered by the report thirty-one mothers and seventy-six children stayed at Spofforth Hall. The length of stay has varied from one to seven months. It is now unusual for any family to come for less than two months. The warden is strongly of opinion that more than a short stay is necessary to overcome habits of neglect and mismanagement. Mothers who have been placed on probation for the neglect of their children, with a requirement that they reside at a recognized training home, must stay for at least four months; the committee records its appreciation of " this wise condition imposed by the Home Office." The plan of training is to teach a mother by degrees how to carry out her household duties to a point at which she can accept almost complete care of her children, planning and buying the family's food, cooking it on a stove similar to the one she will have at home and having the meal as a family group. It is hoped to renovate a large room and to equip it as a mother's kitchen so that the mother and her family can live as a unit for a short time before returning home.

Experience has shown where cases can easily break down after the period of training. The committee has come to the conclusion indicated in the following paragraph:

"Save in exceptional circumstances, the committee's view now is that residence at Spofforth Hall should be postponed until there is a home in which the mother has the opportunity to practise the advice and help she has received. The Home Office wisely requires, as a condition of the payment of maintenance, an assurance that a home will be available for the mother when she has completed her training."

VEHICLES (EXCISE) ACT, 1949
TIME LIMIT FOR PROSECUTIONS

In a contributed article at 118 J.P.N. 384, it is suggested that the time limit for summary proceedings under the Vehicles (Excise) Act, 1949, is six months, with the one exception of proceedings under s. 15 (1) where it is twelve months.

In support of this statement is the following paragraph: "Although the Customs and Excise Act, 1952, s. 283 (1) allows proceedings for offences under Customs or Excise Acts to be taken within three years of the offence, that provision is not applied to proceedings under the Vehicles (Excise) Act by the Transferred Excise Duties (Application of Enactments) Order."

A correspondent has questioned the accuracy of this statement and we have considered it carefully. We have come to the conclusion that our contributor's argument is not sound, and we think it is due to him to explain in some detail why we have come to a different conclusion.

We start with s. 313 (1) of the Customs and Excise Act, 1952, as follows: "The following provisions of this section shall have effect where the power to levy any duties has been transferred to any local authority under s. 6 of the Finance Act, 1908, or s. 15 of the Finance Act, 1949."

Section 313 (2) provides that the foregoing provisions of the 1952 Act (which include s. 283 (1)) are not to apply to duties where the power has been so transferred unless provision is specially made to apply them. There are exceptions in subs. (2) which are not material to our argument. The special provision applying certain sections of the 1952 Act to the "transferred" duties is contained in the Transferred Excise Duties (Application of Enactments) Order, 1952, which does not so apply s. 283 (1) of the 1952 Act.

It is clear that if s. 313 of the 1952 Act applies to duties levied under the Vehicles (Excise) Act, 1949, the special time limit of three years for the institution of summary proceedings which is contained in s. 283 (1) of the 1952 Act does not apply to proceedings under the 1949 Act. The question is, therefore, whether the power to levy the duties imposed by the Vehicles (Excise) Act, 1949, has been transferred to local authorities under s. 6 of the Finance Act, 1908, or s. 15 Finance Act, 1949? We can ignore s. 15 because that relates only to hawkers' licences, moneylenders' licences, pawnbrokers' licences and refreshment house keepers' licences.

Section 6 of the Finance Act, 1908, transferred to local authorities the power to levy duties on local taxation licences to which the section applied and these by s. 6 (4) were "the duties on licences to deal in game, licences for dogs, killing game, guns, *carriages (including duties charged under ss.* (1) *of s.* 8 *of the Locomotives on Highways Act*, 1896 . . ."

The words from "carriages" to "1896" were repealed by the Finance Act, 1944, s. 49 (9) and the sch. 5. Long before then, in the Roads Act, 1920, s. 1, it had been enacted that "The duties on licences for mechanically-propelled vehicles (in this act referred to as vehicles) imposed by s. 13 of the Finance Act, 1920, as amended by this Act, shall, as from the first day of January, 1921, be levied by county councils in accordance with provisions to be made for the purpose by order in council."

Section 13 (1), Finance Act, 1920, provided that as from January 1, 1921, any excise duty previously chargeable in respect of a vehicle which was chargeable with duty as a mechanically-propelled vehicle under the Act should cease to be chargeable, and there should be paid instead the appropriate duty for a mechanically-propelled vehicle as set out in sch. 2 of the Act.

The position therefore was that a new system was introduced by the Finance Act, 1920, for taxing mechanically propelled vehicles, and the Roads Act, 1920, provided that the duties on licences for such vehicles should be levied by county councils.

The Vehicles (Excise) Act, 1949, consolidated the provisions relating to excise duties on mechanically propelled vehicles and repealed many of the former provisions. Section 1 (1) of the Roads Act, 1920, was replaced by s. 8 (1) of the 1949 Act "The duties chargeable under this Act shall be levied by county council in accordance with provisions to be made for the purpose by Order in Council."

This was the state of affairs when s. 313 of the Customs Act, 1952, was enacted. To support the argument that that section applies so as to exclude the Vehicles (Excise) Act, 1949, from the operation of s. 283 (1) of the 1952 Act one must argue that it was considered proper in 1952 to ignore the repeal in s. 6 (4) of the 1908 Act effected by the Finance Act, 1944, to overlook the entirely new system of duties introduced by the Finance Act, 1920, with the special provision for levying those duties by county councils contained in the Roads Act, 1920 (and repeated in the Vehicles (Excise) Act, 1949, s. 8 (1)) and to rely upon an inference that the repealed provision of the 1908 Act was intended to make s. 313 of the Customs and Excise Act, 1952, apply to duties imposed by the 1949 Act.

It is true that s. 38 (1) of the Interpretation Act, 1889, provides that "where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modifications, any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted." We do not think, however, that this can be prayed in aid to support our contributor's argument on the point in question. We think that when Parliament in 1952 passed an Act which referred to an Act of 1908 it intended, unless the contrary intention was made manifest, to refer to that Act as it then stood. Had it been the intention to bring the Vehicles (Excise) Act, 1949, within s. 313 nothing would have been easier than to add, after "Finance Act, 1949" in subs. (1) the words "or s. 8 (1) of the Vehicles (Excise) Act, 1949."

In our view s. 313 (1) cannot be interpreted as our contributor suggests, and we think that the operation of s. 104 of the Magistrates' Courts Act, 1952, is excluded by s. 283 (1) of the Customs and Excise Act, 1952, so that, except where under s. 15 (1) of the 1949 Act the time limit for summary proceedings is twelve months, the appropriate limit is the three years fixed by s. 283 (1).

THE MAN IN BLUE

By PAUL T. W. BUTTERS, *Solicitor*

In these enlightened days when almost every type of workman complains, at some time or other, that he is over-worked and underpaid, it is interesting to examine, in broad outline, the normal duties of another type who is not noticeably overpaid but rarely complains about it.

As soon as he drapes the official blue around his manly figure (and it has to *be* manly or he won't get a uniform at all) the rawest recruit in the Police Force assumes responsibilities which would daunt a lesser man. Though he may not realize it at once (which is just as well for his peace of mind) he is taking on a job which demands much the same qualities as are to be found, perhaps, in a Prime Minister of a major power or a successful Reigning Sovereign in his own right, but rarely in anyone else. Tact; firmness; discretion in the exercise of his duties; a sense of humour and an understanding of human nature are but a few of them. In addition to these uncommon attributes, the aspiring policeman has to learn the rudiments of his craft.

The old-fashioned "Bobby" whom our fathers knew, respected, and perhaps feared a little, sound fellow that he was, is as much out-of-date nowadays as the time-worn phrase "A Bobby's job." About the only thing your modern police officer has in common with the old-timer is his official girth which, while invariably impressive, appears to increase progressively with his promotion. Seen in profile (which is undoubtedly the best position from which to appreciate his majestic proportions) the official arc is noticeably more rounded in the sergeant than in the constable. But if his girth is apt to increase with his responsibilities, this does not mean that the "Bobby's job" is the sinecure it was once supposed to be (it is doubtful if it ever was); on the contrary, it is one which makes great demands, both mental and physical, on the Man in Blue, and it is surprising that so many young men, with such a heavy burden of responsibility on their shoulders, make such a good job of what used to be called "Bobbying."

The oath which the embryonic policeman takes before the justices has been described as "the characteristic mark of the conversion of a local administrative officer into a ministerial officer of the Crown," and these words are no overstatement. His normal duty is "to preserve the Queen's Peace and with that object to keep watch and ward in his several districts and to bring criminals to justice"; while any leisure time he may have from this admittedly arduous task is to be spent "protecting life and property." This picture of a sort of modern Robin Hood, dressed in blue instead of green, and favouring a truncheon and whistle instead of the more conventional bow and arrows is, perhaps, a little overdrawn. For a time, at any rate, his protection of life and property is limited to stopping motorists from running into each other at busy road junctions (and traffic control isn't half as easy as it looks); while his bag of desperate criminals might very well be limited to a recalcitrant drunk who prefers to spend a night in a prison cell rather than with his wife (this preference, on occasion, not being quite so unreasonable as it might at first appear, depending as it does on the sort of wife the unfortunate man has to go home to).

But the basic responsibilities are always there, and when the aspiring youngster assumes all "the powers, privileges and duties of a duly appointed constable" within what is beautifully described as "his constablewick" he is biting off just about as much as, if not a little more than, any normal man can be expected to chew with comfort. His powers are considerable; his privileges few; the mistakes he can make are legion and their results potentially disastrous to any young man who hopes to finish his career with a Superintendent's Crown or an Inspector's Star on his shoulder before he disappears into an honourable retirement to write his memoirs. The liberty of the subject is jealously guarded—as, indeed, it should be—and woe betide the young constable who, carried away by youthful zeal, so far forgets himself as to exceed his powers of arrest without a warrant. Whenever he is even in the least doubt about this dangerous power of his, the constable should accept the single word of advice which was proffered to the other young man who confessed, at an early age, that he was contemplating matrimony —"Don't." "A constable," says the law, in no uncertain terms, "is personally liable for any misuse of his powers or any act in excess of his authority." Every ambitious young officer should have those pregnant words embroidered in letters of gold (or fire would be preferable, if it were practicable) and placed in a conspicuous position in his bedroom, so that they are the first thing he sees when he gets out of bed in the morning.

It is not to be wondered at that a recruit is subjected to a searching inquiry into his character and antecedents as well as his physical fitness before he is entrusted with such responsibilities as these. His character is investigated as thoroughly (if not more so) as if he were about to enter the Church; if there is the least blemish on it he might just as well stay at home with a good book. His birth certificate is scrutinized with equal care, and if he was born more than thirty years ago he has left it too late. They run a foot-rule over him and if he isn't at least five feet eight inches high he is told to go away and not come back until he is. He might have a skull literally seething with brains, a chest like a barrel and biceps like footballs, but if he is only five feet seven and a half inches high it all counts for nothing: he might just as well be a four-foot dwarf with a hump on his back and no brain to speak of. All of which is apt to be a bit discouraging for a fine, upstanding young man of brilliant intellect and high academic qualifications—but only five feet seven and a half inches from top to toe. Still, he should find some consolation in the fact that he will almost certainly get a much less ardous and better paid job without very much trouble. He might, in later years, when he has become a cabinet minister or a dentist or something equally expensive, be thankful for the lack of that fatal half-inch.

As a class, policemen, from the humblest "Bobby" to the august figure of the Chief Constable himself, are the salt of the earth. There are exceptions, of course, but not many and what few there are don't usually remain policemen very long. To the normal, law-abiding citizen, the Man in Blue is a guide, philosopher and friend. The trouble is, of course, that not all of us *are* normal, law-abiding citizens—some of us are motorists. To the happy man whose ambitions take him no further than a pedal cycle or his own two feet, the policeman is a benign and kindly soul who spends most of his time looking after the widows and orphans, helping old ladies to cross the street, patting small children on the head, being kind to animals and generally spreading sweetness and light. To a motorist of any experience, he is a large figure in official blue whom you find waiting ominously by your car which you realize rather belatedly you have parked on the wrong side of the road and facing the wrong way in a one way street. He also has a disconcerting habit of asking you to produce your driving licence and insurance

certificate on the slightest provocation, and frequently without any provocation at all. This is invariably followed by the rapid production from various recesses of his clothing of a notebook and pencil and the suggestion that you might " care to make a statement "—and this invitation is invariably couched in terms so polite as to put any cautious motorist on his guard at once. The wise motorist naturally declines to make a statement with a politeness as convincing as the officer's. He should be careful to point out that though he has nothing to hide, of course, and is prepared—not to say positively anxious—to make one, he thinks he'd better not because his solicitor might not like it. Solicitors, he says, are touchy about those things. And he is absolutely right. His solicitor wouldn't like it at all. After all, he wants to have *some* chance of getting his client off.

If your first meeting with a police officer is by your wrongly-parked car or, perhaps, after an accident when by some mischance (due, of course, to circumstances beyond your control) you were driving at sixty miles per hour on your wrong side of the road round a blind corner, and ran into another motorist who was so criminally incompetent that he wasn't quick enough to drive through the hedge and get out of your way—then the next time you meet the officer in question will almost certainly be in the magistrates' court. You will then have an opportunity of seeing him teaching civilian witnesses (including yourself) How To Give Evidence, in one easy lesson.

As witnesses, policemen are in a class by themselves. After the intake of one long, official breath, they take the oath in the manner of one on familiar terms with it, recite their name, rank and station, draw themselves smartly to attention and tell " their Worships " all they need to know. And when a diffident solicitor rises to cross-examine, they fix him with a baleful (but always respectful) eye, obviously prepared to tell *him* all he needs to know as well. Studded as it is with an " inst." and a " prox." at every breath, and with a few judicious " Your Worships " thrown in, the police officer's evidence is apt, on occasion, to sound like a carefully-typed letter written without much punctuation in it, but at the same time it is usually so accurate and precise as to be positively depressing to a cross-examining advocate. Apart from their almost invariable veracity, all policemen, from the Super. to the humble Bobby, have the merit of loyalty to their colleagues, and if an advocate ever hopes to hear one policeman contradict or criticize another he is likely to be a very disappointed man when he sits down. They will rarely admit a mistake by themselves ; they will *never* admit one by a colleague. So, when you come to think of it, it is hardly worthwhile cross-examining them at all. The most probable thing a cross-examination is likely to achieve is to bring out some further damaging facts against the defendant which the rules of evidence prevented the officer from giving in his examination-in-chief.

No article on police officers would be complete without a diffident reference to that branch of the Force who wear skirts instead of trousers and contrive to look amazingly attractive in them. After a careful, but at the same time cautious scrutiny of the female personnel of any police force (for *they* have powers of arrest as well) one is tempted to suspect that its members are chosen, not for their intelligence but for their physical beauty and charm. This would be a gross libel (though, no doubt, a libel not altogether unwelcome to them) for they are generally well above the average in intelligence, but the fact remains that most women police officers could take their place in the front row of any beauty chorus without any noticeable lowering of its standard of feminine charm. Add to this the fact that most of them are at the same time capable and efficient police officers as well, and you will appreciate that, as a class, they are fully as exceptional as the men and—let's face it—a great deal more attractive to look at. For my part, I don't hesitate to say that if I am ever to be arrested it will be a pleasure to have the job done by any one of them.

" ORDINARILY RESIDENT "

By J. A. CÆSAR

With the coming into operation of the National Assistance Act, 1948, and the consequential abolition of the Poor Law, one of the administrative problems which it was envisaged would be considerably eased was the method of ascertaining financial responsibility as between local authorities for the provision by one local authority of assistance to a person from the area of another local authority.

The complex law of settlement, in accordance with which such liability was determined under the Poor Law, was replaced by the seemingly simple and straightforward test of residence, and on the face of it it seemed unlikely that much difficulty would arise in the application of the relevant provisions of the new Act.

Section 32 of the 1948 Act states categorically that any expenditure which, apart from the provisions of that section, would fall to be borne by a local authority—*viz.*, for this purpose, the council of a county or of a county borough—in the provision, *inter alia*, of accommodation under Part III of the Act, or of services under s. 29 of the Act, for a person " ordinarily resident " in the area of another local authority, is recoverable from the latter authority, and that any question as to the ordinary residence of a person for this purpose is to be determined by the Minister of Health. (*See*, too, Children Act, 1948, s. 1 (4)).

Under s. 21 of the National Assistance Act it is the duty of a local authority to provide residential accommodation for any person who by reason of age, infirmity or other circumstance is in need of care and attention which is not otherwise available to him, and to provide temporary accommodation for any person in urgent need thereof by reason of circumstances which could not reasonably have been foreseen.

Section 24 enacts, *inter alia*, that the *liability* to provide accommodation for any person under the Act rests, in the case of residential accommodation, upon the authority in whose area the person is ordinarily resident, and, in the case of temporary accommodation, upon the authority in whose area the person is.

As regards residential accommodation, however, a *duty* to provide such accommodation is imposed upon the local authority in whose area a person *is* if such person either has no settled residence or, not being ordinarily resident in the area of that local authority, is in urgent need of such accommodation, or, of course, if such person is ordinarily resident in that area.

It is further enacted that where a person is provided with residential accommodation under the Act he is to be deemed, for the purposes of the Act, to continue to be ordinarily resident in the area in which he was ordinarily resident immediately before the residential accommodation was provided for him.

Provision is also made for the entering into of agreements between local authorities for the discharge of their functions under the Act, but this, and the requirement for the making

of schemes by local authorities for the discharge of their functions under the Act, together with the transitional provisions of the Act, need not here concern us.

As regards welfare services, as distinct from the provision of accommodation, a local authority are empowered by s. 29 to make arrangements for promoting the welfare of blind, deaf or dumb persons and other persons who are substantially and permanently handicapped by illness, injury or congenital deformity or such other disabilities as the Minister may prescribe and, in relation to such of these persons as are ordinarily resident in the area of a local authority the authority are, to such extent as the Minister may direct, under a duty to exercise their powers under that section.

It is mainly the expenditure under the foregoing statutory provisions which, in the appropriate circumstances, falls to be recoverable under s. 32, and it is because, in practice, there appears to be a growing tendency to seek to interpret " ordinary residence " by an application of the obsolete rules relating to " settlement " that this article has been written.

The difficulties which may be encountered when endeavouring to ascertain ordinary residence in any given case are, of course, not new. They have been met with under various heads in the past, and there are many decisions of the courts relating to the meaning of "ordinary residence" and "ordinarily resident" for the purposes of the various statutes wherein such expressions have been used. The decision in *Stransky* v. *Stransky*, [1954] 2 All E.R. 536, is a case in point, and is of particular value and interest in that Karminski, J., in his judgment, refers to several earlier cases in which the meaning of the words " ordinarily resident " was the subject of judicial decision or comment.

Stransky v. *Stransky* was concerned with the question of the jurisdiction of the court on a petition for divorce and with the application to the facts in that case of the provisions of s. 18 (1) (*b*) of the Matrimonial Causes Act, 1950 (whereunder jurisdiction on a wife's petition is conferred, notwithstanding that the husband is not domiciled in England, if the wife " is resident in England and has been ordinarily resident there for a period of three years immediately preceding the commencement of the proceedings . . .")

Karminski, J., made reference, *inter alia*, to the judgment of Viscount Cave in *Levene* v. *Inland Revenue Comrs.*, [1928] A.C. 217, in relation to the meaning of " ordinary residence " for the purposes of the Income Tax Acts, and to the decision in *Hopkins* v. *Hopkins*, [1950] 2 All E.R. 1035 (a case decided under the wording of s. 18 (1) (*b*) of the Matrimonial Causes Act, 1950—then that of s. 1 (1) (*a*) of the Law Reform (Miscellaneous Provisions) Act, 1949) ; he distinguished between the words " resident " and " ordinarily resident " as used in s. 18 of the 1950 Act, and, in the concluding part of his judgment, gave an indication of the importance attaching to a person's *intention* in the consideration of the question of where that person was or is " resident " and " ordinarily resident." .

In this latter connexion, the reference to *Macrae* v. *Macrae*, [1949] 2 All E.R. 34, 113 J.P. 342—a case under the Summary Jurisdiction (Married Women) Act, 1895, s. 4—is particularly interesting and, it is submitted, apposite to the question of ordinary residence for the purposes of the National Assistance Act. In that case, Somervell, L.J., said that " ordinary residence . . . can be changed in a day. A man is ordinarily resident in one place up till a particular day. He then cuts the connexion he has with that place—in this case he left his wife ; in another case he might have disposed of his house—and makes arrangements to have his home somewhere else. Where there are indications that the place to which he moves is the place which he intends to make his home for, at any rate, an indefinite period, as from that date he is ordinarily resident at that place."

MISCELLANEOUS INFORMATION

YEOVIL'S NEW COAT-OF-ARMS

Yeovil's (Somerset) new coat-of-arms, the costs of which have been defrayed by an anonymous townsman as part of the centenary celebrations, will replace the representation of the seal which has been used as the identity mark of the borough since the end of the fourteenth century.

The new coat-of-arms have been designed by Mr. H. Ellis Tomlinson, M.A., of Poulton le Fylde, Lancs., largely from historical notes compiled by Mr. John Goodchild. It consists of the full achievement a borough may possess and has been approved by the College of Arms.

The main feature is the figure of St. John the Baptist beneath a decorated canopy which has been the centre of the Corporation seals for about 700 years. The crowns and croziers on the shield emphasize the borough's royal and ecclesiastical associations. A Saxon crown is shown for Alfred the Great, and out of the crown rise flames, representing the disastrous fires of early times and also modern engineering industries. Out of the flames rises a black bull, typifying the agricultural market and the dairying industry. He holds a small blue shield with a gold glove symbolizing Yeovil's most characteristic industry.

The supporters are made up of the emblems from the arms of the families most closely connected with the history of Yeovil—the Arundel, Maltravers of Hendford, Horsey of Clifton Maybank, Phelips of Montacute and Harbin of Newton Surmaville.

DERBYSHIRE FINANCIAL SUMMARY, 1953/54

Mr. T. Watson, A.S.A.A., F.I.M.T.A., President of the Society of County Treasurers, has published an excellent and early summary of the finances of his county for 1953/54.

Population in mid-1953 was estimated at 692,000 (there are only nine English counties with a larger population than Derby), rateable value at April 1, 1953, was £3,875,000, and rateable value per head of population £5 12*s.* 0*d.* Nineteen English counties levied a lower rate than the Derby 15*s.* 6*d.* : the addition of district rates brought this levy to an average 22*s.* 11*d.* and there were twenty-one English counties where the average rates were less than this amount.

In order to show how expenditure has grown Mr. Watson has compared 1953/54 with 1949/50 which he has chosen as a standard year. In this connexion he points out that there must be borne in mind the increases of wages and prices since that date and quotes the following figures :

	Ministry of Labour Cost of Living Index	Ministry of Labour Index of Wage Rates
Financial Year 1949/50	100	100
" " 1953/54	125	126

A comparison of the two years, however, shows that expenditure is increasing more rapidly than these indices :

	Gross Expenditure	Gross Expenditure Per Head of Population
	£	£ *s.*
Financial year 1949/50	7,258,000	10 14
" " 1953/54	10,206,000	14 15
Percentage increase on 1949/50	41	38

Net loan debt, although only equivalent at March 31, 1954, to £7 16*s.* 0*d.* per head of population, had risen in four years from £1,880,000 to £5,395,000.

In 1953/54 the major source of income of the county council was from government grants. These amounted to £6,799,000 (including equalization grant of £1,717,000), whereas rates only produced £2,835,000.

The county council was in the happy position of increasing its balance during the year by £219,000 to a total of £563,000, largely because most committees spent less than was anticipated. Mr. Watson emphasizes, however, that the balance is not represented wholly by cash but is the excess of all revenue assets, such as cash, stores, debtors, work in progress and the like, over revenue creditors and other liabilities.

During the year the county council applied from balances the estimated product of 1*d.* rate (£15,100) to establish a capital fund and the estimated product of a 2*d.* rate to establish a repairs and renewals fund. In addition the depreciation charges of the highways, county works and printing departments were paid into the repairs and renewals fund. It is intended that the financing of replacement plant for these services from the fund will be brought into operation in stages over the next five years.

The county council operate a scheme to enable officers in receipt of essential user allowances to purchase cars and loans are also made to police officers for the purchase of typewriters and bicycles. These facilities are evidently appreciated: during the year £56,000 was advanced and interest amounting to £1,600 charged to the officers concerned.

Useful tables of service unit costs conclude the booklet.

THE MENTAL HEALTH SERVICE

Mental health authorities throughout the country are making strenuous efforts to obtain increased nursing staffs without which there seems to be a danger in some areas of a general setback in the modern care and treatment of those who are mentally ill. The shortage of staff in some hospitals is alarming. For instance, in the area covered by the Birmingham Regional Hospital Board, the shortage is said to be thirty-five *per cent.* Since the passing of the Mental Treatment Act, 1930, the admission of patients on a voluntary basis has steadily increased, and new methods of treatment have also been adopted. In 1952, the proportion of voluntary male patients in the Birmingham region was sixty *per cent.* and voluntary female patients fifty-eight *per cent.* It is also satisfactory that the majority of the admissions were under sixty-five years of age, and we hope this means that the certification of elderly persons for admission to the mental hospital because nowhere else can be found for them is diminishing. Modern methods of treatment, particularly the improvement in psychiatric treatment, require increased staff if full advantage is taken of them. It is no doubt due largely to modern treatments that some eighty *per cent.* of the patients admitted to a mental hospital in any one year are either cured or are sufficiently improved to enable them to return to live in the community. If, however, the necessary increased staff is not forthcoming some authorities feel that advances in methods of treatment and care will be checked and there may be a return to the old system of providing merely care and protection. Some mental hospitals are having "open days" to which general practitioners, voluntary organizations and other interested bodies are being invited. This seems to be a sound scheme.

Mental hospital authorities generally are anxious to improve their methods and might profit from the experience of the Dingleton Hospital, Melrose, Roxburghshire, where, as was reported at a recent conference at Peebles, there are no locked doors and no "prison atmosphere". Since the experiment began three years ago there has been a remarkable improvement in the health of the patients and particularly of the epileptics who have had less fits. The number of hallucinations and delusions suffered by patients has also decreased. Some who had been there for many years are allowed to go in and out freely, such as to football matches, and there is no prescribed hour at which they must return. It has, however, been essential to obtain the co-operation of local townspeople amongst whom the patients intermingle freely. This would clearly be necessary before such a scheme is started elsewhere.

THE DEVELOPMENT FUND

The development fund established by the Development and Road Improvement Fund Acts, 1909-1910, was for making advances either by way of grant or loan for various purposes including the development of agriculture and rural industries. The fund is administered by the development commissioners, which have no executive powers, and their main duty is to consider and report to the Treasury on applications for advances referred to them. It was reported to the Select Committee on Estimates that since 1946-47, agricultural education, research and advisory services have been considered to have reached a stage of development at which they had become normal, and recognized activities to be borne on the vote of the appropriate department. During the next four years, a fixed amount of £400,000 *per annum* will be included in the estimates for the development fund towards the assistance of rural activities such as rural industries provided by women's institutes, the National Council of Social Service, rural community councils, village halls, rural institutes and the Scottish County Industries Development Trust, all of these activities being unsuitable for transfer to a department. This is an increase of £25,000 on the total grants made last year. In the past, the grants to such bodies as the National Council of Social Service and rural community councils have been fixed each year. It will be an advantage for the Commission to be able to plan ahead for the full period in consultation with the bodies concerned and enable them to rely on the probability of the same grant being available each year subject to the conditions remaining the same.

Although the Commission has no executive powers in the sense that once a particular grant has been recommended, the money passes beyond their control, as most grants are recurrent and are made yearly, the Commissioners can, in fact, control expenditure; for, if money paid from the fund is not used in an approved manner, renewal can be refused. Further, by attaching conditions to the advances, a direct influence over the administration of those advances may be exercised even when grants or loans are not recurrent. The Commission occupies a position distinct from a government department in that it is free to make its recommendations without reference to a minister (though on any application from an outside body the Commission will receive a departmental report), and that its recommendations are not subject to confirmation by Parliament.

SOUTHEND-ON-SEA PROBATION REPORT

After-care now forms an important part of the work of probation officers, and it must take up a considerable amount of time if it is to be done thoroughly. In his report for 1953, Mr. V. N. Godfrey, senior probation officer for the county borough of Southend-on-Sea, states that during the year the staff accepted responsibility for the after-care supervision of twelve cases from prison, seventeen cases from borstal and thirty-seven cases from approved schools. The increase in the total number of persons under the supervision of the probation officers is almost entirely due to the increased number of ex-approved school cases.

In the fields of matrimonial conciliation work, and other matrimonial work, the number of applicants for help in their domestic difficulties showed an increase over previous years, and similarly the miscellaneous work recorded under the heading of Kindred Social Work indicates an increasing use of the probation officer's services by the courts, the penal institutions and after-care agencies, and the general public who need advice on domestic problems or some of the civil matters which are the concern of the magistrates courts.

Probation officers always welcome the opportunity of furnishing the courts with what are generally termed social reports, but although these are used generally in juvenile courts, this is not so in all other courts. Mr. Godfrey records with pleasure a substantial increase in the number of social reports made, the increase being due to the greater use made of them in the adult courts.

The work of case committees is nowadays generally appreciated and it is felt that not only do the probation officers benefit but also the justices themselves gain an increased knowledge of the objects of probation and the work of probation officers. In Southend a new method of interesting justices generally has been adopted. Mr. Godfrey states: "During the year several magistrates, not being members of the probation committee, have been invited to attend the meetings of the case sub-committees in order that they might participate in the case discussions and gain a clearer conception of probation methods.

As the most effective use of the probation system can only be achieved when there is the fullest co-operation and understanding between magistrates and probation officers in the selection and treatment of cases, my colleagues and I hope to see this innovation develop until all magistrates have attended at least one case committee."

While disclaiming any intention to generalize about the causes of juvenile delinquency, Mr. Godfrey makes some significant observations about the boys and girls dealt with by the probation officers. "Of the eighty-four juveniles, only thirteen boys and three girls were attached to any church and in only one or two cases was it really active membership.

"Very few made any constructive use of their leisure time at home, and in fact only fifteen boys—out of seventy—were attached to any club or youth organization at the time of their court appearance.

"Sporting activities and team games had no appeal except for no or two lads, and the cinema was all too frequently the only "activity" engaging their attention outside the home."

Conditional discharge is regarded by many magistrates and others as a method of treatment to be used rather sparingly because they feel that in most cases where punishment is suspended the influence of a probation officer is desirable. There are, however, cases in which the previous character of the offender and his home and associations make it so unlikely that he will offend again as to make it a waste of the probation officers time if a probation order were made. In this report is is stated that of seventy men and women dealt with at the borough quarter sessions only twelve were placed under supervision. This was a much lower proportion than in 1952 and is due to an increase of conditional discharge.

With the help of the police, figures have been prepared for the individual years from 1939–1948, showing the number of persons

reconvicted of an indictable offence within the space of five years following completion of their periods of probation. These show that over the period of ten years the percentage of recidivists for both sexes is 17·4 *per cent.* and that the figure of recidivism for females is 19·5 *per cent.* as against 11·4 *per cent.* for females.

GREAT YARMOUTH POLICE REPORT

It is rather a relief to come across reports of chief constables which reveal no serious shortage in numbers. In his report for 1953, Mr. C. F. Jolliff, chief constable of the county borough of Great Yarmouth, states that the authorized establishment is 100, and the actual strength is ninety-eight. During the year wastage was equalled by new appointments.

The number of crimes was two above the figure for 1952, but there was a decrease of twenty-five *per cent.* in the "breaking offences." The "tremendous increase" in false pretences cases is described as disturbing, and the chief constable urges the public to be more on their guard against the plausibility of those who practise this kind of offence.

In connexion with traffic offences, there is an exhortation to pedal cyclists to observe the law about lights, and not to take the risk which not only endangers their own safety, but also jeopardizes the safety of other road users. In general, Yarmouth is to be congratulated on the decrease in the number of street accidents. Casualties decreased by nineteen which, says the report, is particularly gratifying having regard to the increase in the national casualty figure by nearly nine *per cent.* during the period under review.

There was a satisfactory reduction in the number of offences committed by juveniles, which applies to both indictable and summary offences.

Mr. Jolliff comments: "It is with pleasure that I record a reduction of twenty-six *per cent.* in the number of juveniles dealt with during the year as compared with the previous year. In accomplishing this achievement, which is the lowest recorded figure since 1948, I feel that credit is due to the invaluable assistance that has been rendered by the teaching profession and those persons responsible for the organization of youth clubs and similar movements. It is evident that parents, upon whom is placed the main responsibility for the upbringing of their children, have also made a large contribution to the results obtained.

"We cannot, however, afford to be complacent in this matter, and with continued co-operation of all concerned I feel that with timely advice, proper guidance and supervision, still better results can be attained."

It is a pity that here, as in many other places the strength of the special constabulary is much below the authorized establishment, being eighty-seven against an authorized establishment of 200. The chief constable acknowledges the efficiency and devotion of serving officers, but appeals for more recruits.

ASHTON-UNDER-LYNE MAGISTRATES' COURT

Statistics are a useful feature of many reports, but they can easily mislead people who do not study them closely or consider them thoughtfully. In his report for the year ended March 31, Mr. Albert Platt, clerk to the justices for Ashton-Under-Lyne, repeats earlier warnings that statistics may vary from year to year without really meaning anything at all. In his opinion it is only when there is a very wide fluctuation or a continuous fluctuation that reasonable conclusions can be drawn from them.

Indictable offences dealt with summarily, mostly cases of larceny, fell to 172, compared with 354 for the previous year. Mr. Platt feels that it is reasonable to assume that so far as the post-war epidemic of stealing is concerned, the situation is easing. On the other hand, road traffic offences have increased fifty *per cent.* This may be due partly to greater readiness to bring cases to court, and partly to the increased number of vehicles on the roads. It is inevitable that penalties should vary considerably, but it is no doubt desirable that penalties in respect of similar offences should not differ too widely, except for considerations such as the means and the records of offenders. This report suggests that there might be a discussion on road traffic penalties at a meeting when, no doubt, varied points of view could be propounded.

There was also a fifty *per cent.* increase in other summary matters, civil and criminal. Though the number of orders payable through the collecting officer has not increased markedly, the amount of work involved in the clerk's office has. "For a number of years now we have prepared and certified a considerable number of copies of notes of evidence in matrimonial cases to be used in divorce proceedings. Recently a practice has grown up of parties requesting statements as to payments made through the collecting office for income tax purposes. The tax authorities and recently the National Insurance Ministry are now making similar requests. To ask for one year is not so bad but often the request covers many years back and needs considerable research."

Juvenile court cases are substantially down from 362 to 234. This improvement has now continued for some time.

REPORT OF N.A.P.O.

During the year 1953 the financial position of the National Association of Probation Officers improved, owing to the special efforts of the branches in addition to those of the association itself, and a reserve of £1,000 has been established. Membership increased to nearly a thousand, 109 new members were admitted during the year. The target of 100 *per cent.* membership has not yet been reached. Branches and members continue to interest magistrates and other social workers in the aims of the association so that there is also a steady stream of additional associate members.

The association has again been active in preparing memoranda for various inquiries. The contracts between the association and kindred bodies and interested individuals in other countries continue to grow.

A great deal can be done by such an association to acquaint the general public with the aims and methods of the probation service, and what probation really means. In this the branches are doing good work.

The branches of the association, says the report, have continued their local work with increasing success and their activities range from week-end conferences of which eight were held during 1953 involving eleven branches, to single meetings, film shows, brains trusts and visits to institutions.

ROAD ACCIDENTS—MAY AND JUNE

(With total for six months ended June 30)

Road casualties in June totalled 21,143. This was 533 more than in June of last year, but the increase was mainly among the slightly injured. The killed numbered 364, a decrease of forty-seven; and the seriously injured, 5,105, an increase of twenty-one. These figures are provisional.

Final figures for May give a total of 20,013—1,165 less than in May, 1953. The killed numbered 372, a decrease of 60; and the seriously injured 4,767, a decrease of 307.

In the first six months of this year there were 1,394 fewer road casualties than in the same period of 1953. The figures are as follows:

	Killed	*Seriously Injured*	*Slightly Injured*	*Total*
1954 (to end of June)..	2,101	24,472	75,463	102,036
1953 ,, ,, ..	2,278	25,673	75,479	103,430
Decrease ..	177	1,201	16	1,394

Details for June are not available, but figures for the first five months compared with the same period of 1953 show two encouraging features—fewer casualties to children and fewer fatal or serious injuries to motor cyclists and their passengers. There were 9,849 casualties among child pedestrians, a decrease of 683; and 3,413 casualties among child pedal cyclists, a decrease of 690.

Casualties to drivers of motor cycles (excluding motor assisted pedal cycles), totalling 11,727, were 312 fewer than in the same period of 1953. Deaths numbered 265, a drop of sixty-two; and cases of serious injury, 3,766, a drop of 253. The number slightly injured was 7,696, an increase of three.

Figures for pillion riders and side-car passengers tell the same story. Thirty-nine were killed, a decrease of twenty-five; and 810 seriously injured, a decrease of sixty-eight. There was little change in the number of slightly injured, which was 2,146, a decrease of thirty-nine.

BIRTHS AND DEATHS IN JUNE QUARTER, 1954

The Registrar General announced the publication of provisional figures of births and deaths in England and Wales in the second quarter of 1954.

Live births registered numbered 175,467, representing a rate of 16·0 per thousand population. Comparable figures for the second quarters of 1953 and 1952 were 179,464 (rate 16·4) and 174,159 (rate 15·9). There were 117,233 deaths registered, representing a rate of 10·7 per thousand population, compared with 114,538 and a rate of 10·5 in the second quarter of 1953 and 115,369 (rate 10·6) in the second quarter of 1952. Deaths of children under one year of age numbered 4,262, giving a record low rate for a June quarter of 24·7 per thousand related live births, compared with 4,441 and a rate of 25·6 in the corresponding quarter of 1953. In the second quarter of 1938 the corresponding figures were 8,006 and 50·3 respectively.

FORTHCOMING DISTRIBUTION OF ROUMANIAN ASSETS

The Administrator of Roumanian Property has now received directions from Her Majesty's Treasury to use the money realized by the sale of Roumanian property in the United Kingdom in making payments to persons and firms who possess certain qualifications and whose claims against the Roumanian Government or Roumanian nationals are established as of one of the types specified in the Treasury directions.

Persons who wish to be supplied with a claim form to establish a claim under these directions should apply forthwith to the Administrator of Roumanian Property, Branch Y, Lacon House, Theobalds Road, W.C.1. A special notification dated July 10 has been circulated to persons who have already registered particulars of indebtedness due from Roumania under the facilities provided by the Board of Trade during and since the war, but if no such notification has yet been received by any person who has so registered, and he wishes to receive a claim form, he also should apply forthwith to the Administrator. A registration of indebtedness does not constitute a claim in the distribution, which must be made on a prescribed claim form.

The Administrator will not be able to accept a claim form which is received after January 31, 1955.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 65.

HYPNOTISM ACT, 1952—AN UNSUCCESSFUL PROSECUTION

What is believed to be the first case brought under the Hypnotism Act, 1952, was heard at Northampton earlier this year when a forty-six year old lecturer pleaded not guilty to two charges laid respectively under s. 2 and s. 3 of the Act.

The first charge alleged that the defendant gave a demonstration of hypnotism on a named person in connexion with an entertainment to which the public were admitted at a place not licensed for public dancing, singing, or other public entertainment of the like kind, the controlling authority not having authorized such demonstration. The second charge alleged that the defendant gave a demonstration of hypnotism on a young man of nineteen years at or in connexion with an entertainment to which the public were admitted.

For the prosecution, a number of witnesses were called, including a woman police constable, who gave evidence that on a night in January last she spent the evening at certain chambers in Northampton attending a lecture on hypnotism in medicine. The lecture was advertized in the evening papers, and she paid 1*s.* 6*d.* entrance fee. She saw the defendant demonstrate hypnotism on the young man of nineteen, who was a journalist, and it appeared to her that the defendant had control over the journalist. The demonstration took about twenty minutes, and about sixty people were present. Prior to the demonstration, there was a lecture which lasted about an hour, which could be fairly described as a scientific lecture.

The witness added that, while under defendant's influence, the journalist was told to raise his arm up and was told that his arm would be stiff and it appeared to be stiff. The journalist appeared to be asleep. The defendant had a revolving disc which he told the journalist to look at, and the journalist complied.

The journalist, called for the prosecution, stated that he wanted to be hypnotized and write up a story to say what it felt like, and he approached the defendant earlier to ask if he would hypnotize him, and the defendant agreed.

At the meeting, defendant asked him to sit on a chair and told him to concentrate on a round disc about 6″ to 9″ in diameter. The disc was black, with white lines drawn round it in circles. There was a light shining on the disc and it revolved. Defendant told him to concentrate on it and after a while it appeared to change proportion and looked like a tunnel.

In cross-examination defendant said that he did not think of the meeting as an entertainment, he would describe it as a serious lecture. The journalist said that he wanted to be hypnotized early so as to catch a train to Wolverton, and he pressed defendant to hypnotize him. He had not lost consciousness while hypnotized, and regarded it as a pleasant experience. He had attended purely as a newspaper man.

A statement made by defendant to the police was put in by the prosecution. The defendant stated that he had given a lecture-demonstration on the medical and educational applications of hypnosis on the night in question. The police had been notified beforehand, and he had been informed by a third party that the police saw no reason why the lecture-demonstration should not take place.

The lecture-demonstration was given by him as part of an educational campaign which he had been conducting for many years.

At the close of the case for the prosecution, Mr. Michael Havers, Q.C., defending, submitted that he had no case to answer on either of the summonses as the demonstration of hypnotism was not given in connexion with an *entertainment* to which the public were admitted. Counsel stressed that the meeting could not be properly described as being an entertainment and submitted that the object of the Act was to prevent the prostitution of hypnotism by people who wanted to make money from it in the theatre.

The justices upheld counsel's submission, and dismissed the summonses.

COMMENT

The writer has been unable to report earlier upon this interesting case because Mr. L. K. Lodge, the clerk to the Northampton justices, to whom the writer is greatly indebted for this report, informed him very shortly after the hearing that he had received notice requesting the magistrates to State a Case. It was only on July 21 last that the prosecuting solicitor gave notice of withdrawal of the application.

It will be recalled that the Hypnotism Act of 1952 came into force in consequence of two or three somewhat disturbing incidents which occurred as a direct consequence of certain persons being hypnotized by others.

The Act provides in s. 1 that where it is desired to demonstrate hypnotism in a place licensed for public entertainment, the licensing authority shall have power to attach conditions regulating or prohibiting the giving of an exhibition, demonstration or performance of hypnotism on any person.

Section 6 of the Act enacts that, except where the context otherwise requires, "hypnotism" includes hypnotism, mesmerism and any similar act or process which produces or is intended to produce in any person any form of induced sleep or trance in which the susceptibility of the mind of that person to suggestion or direction is increased or intended to be increased, but does not include hypnotism, mesmerism or any such similar act or process which is self-induced.

Section 3 prohibits any demonstration of hypnotism on any living person *at or in connexion with an entertainment to which the public are admitted*, unless the controlling authority have authorized the demonstration, and subs. (3) of the section enables a contravention to be punished with a fine of £50.

Section 3 prohibits under the same penalty, a person from giving an exhibition of hypnotism on a person who has not attained the age of twenty-one years, at or in connexion with an entertainment to which the public are admitted.

Section 5 provides that nothing in the Act shall prevent the exhibition, demonstration or performance of hypnotism (otherwise than at or in connexion with an entertainment) for scientific or research purposes or for the treatment of mental or physical disease.

There is no definition in the Act of "entertainment," and it would appear to the writer to be not improbable that this omission may serve as a loophole to avoid the intention of Parliament. R.L.H.

PENALTIES

Wisbech—July, 1954. Failing to have a machine securely fenced—fined £10. A sixteen year old boy who worked for chip basket manufacturers had the fingers of his left hand chopped off by the blade of the machine when he put his arm under the blade contrary to instructions.

Uckfield—July, 1954. (1) Using a tractor for a purpose for which a higher rate of duty was payable. (2) Aiding the driver to drive the tractor while it was not displaying its road fund licence. (1) Fined £40. (2) Fined £5. Defendant, an agricultural contractor with eight previous convictions under the Road Traffic Acts.

Oxford—July, 1954. Interrupting the free passage of the highway—fined £1, to pay 12*s.* costs. Defendant opened his car door while a cyclist was passing. The cyclist collided with the door and injured his head and arm.

Durham—July, 1954. Begging—fined £2 and to forfeit a pedlar's licence. Defendant, a blind housewife, proferred a collecting tin containing £3 6*s.* 5½*d.* to passers-by.

Tipton—July, 1954. Sending a postal packet containing an indecent and obscene letter—fined £5, to pay £12 4*s.* costs. Defendant, a thirty-six year old sawyer, saw a photograph of a sixteen year old girl in a Sunday newspaper and wrote two indecent letters to her. Defendant pleaded he was suffering from malaria.

Bromyard—July, 1954. Causing unnecessary suffering to two dogs—one month's imprisonment—disqualified from keeping a dog for life. A chief inspector of the R.S.P.C.A. said that it was the worst case of starvation he had seen in twenty-four years' experience.

REVIEWS

The New Law of Education. Fourth Edition. By Miss M. M. Wells and P. S. Taylor. London: Butterworth & Co. (Publishers), Ltd. Price 25s. net.

It is explained in the preface to this work that the title "The New Law of Education" has been retained, as serving to indicate the compass of the book, although a good deal of the law which is being treated is now some ten years old. The Education Act, 1944, introduced such great changes that most administrators and school teachers who are at work today will necessarily divide their lives into two parts, before and after that Act, and for some time to come everything dating from that Act and since will be thought of as part of the new law. The arrangement of the work follows that of several other textbooks issued by the same publishers. The law is first expounded in an introductory part, containing more than eighty pages and forming in itself a complete and self-contained treatise, small enough to be readily mastered and yet long enough to deal with all important topics. There then follows the text of the statutes, statutory instruments, and circulars and memoranda. Education is unfortunately one of those topics which tend to bring out a great deal of explanatory and other supplementary matter from Whitehall, as well relying to a great extent upon statutory instruments; it will therefore be useful to have the newest law (as well as the "new") and the prophets collected into one textbook, which is now quite up to date. Of fresh law since the previous edition appeared the most important provisions are those of the Education (Miscellaneous Provisions) Act, 1953. There are also provisions in the Local Government (Miscellaneous Provisions) Act, 1953, and there was the less important enactment of the School Patrol Crossings Act, 1953.

The statutory instruments in Part III were completed as at March 1, 1954, but others which came into force while the volume was going through the press have been put in an addendum.

The Education Acts themselves which occurred in previous editions of the book of course form the main part of the new edition. Those Acts, and the supplementary statutes which appear here for the first time, are fully annotated as at the time of going to press.

The price is so low for these days that it is to be hoped the book will find a market, not merely among local education authorities but amongst all persons concerned with education. Solicitors in private practice who may have to advise clients upon school attendance, and other questions where the legal aspect of education sometimes has to be explained, can also procure it with advantage. They will not find a better explanation in general terms of the present educational system than is given in the introductory portion of this book, or more careful annotation and cross reference than in the notes upon the statutes and statutory instruments.

Key to Income Tax and Surtax. By Ronald Staples. Thirty-Eighth Edition. London: Taxation Publishing Co., Ltd. Price 7s. 9d. post free.

The new edition of this valuable handbook brings the Budget of 1954 into the complex mass of previously existing law. It begins with the rates of tax on companies, foreigners, and individuals, for the year now current, and goes on to the usual detailed information. Wear and tear rates are given in full; there is a list of the double taxation agreements, and tables for calculating gross tax and the tax at various amounts in the pound. As before, the work is conveniently provided with a thumb index in the margin and another across the foot of the page. In this way the desired item, whatever it is, can be found in the shortest possible time. As a working companion to income tax law, we have for some years found it very useful, particularly when it is desired to pick up some matter in a hurry.

Personal Property. By J. Crossley Vaines. London: Butterworth & Co (Publishers), Ltd. Price 37s. 6d. net.

We have felt for some time that there was room for a new book on personal property, bringing together in manageable compass a number of provisions and decisions which may be found in treatises on contract, husband and wife, bills of sale, or as the case may be, and are also suitable for consideration with special reference to their bearing upon property. Mr. Crossley Vaines, who is a lecturer in law at the University of Liverpool, has set out to fill the gap and, in particular, to arrange the rules of personal property for the benefit of students.

The learned author begins with the nature and subject matter of personalty, and with a historical introduction showing how the peculiarly English law upon the subject came into existence, springing from procedure first at common law and then in equity. He devotes ten pages to expounding the nature of personal property as distinct on the one hand from realty and on the other hand from a chose in action. Ownership and possession in relation to personalty are explained, with the difference between the practical and forensic approach to ownership in this country and the conception of ownership in Roman law. The concurrent interests of husband and wife in personalty are often very difficult in practice, and are fully explained. They are followed by bailment and common law liens.

The practically important subjects of transfers and acquisition of personalty are dealt with in ten chapters, covering such matters as negotiable instruments, gifts, occupancy, and the limitation of actions, amongst others. The special characteristics of personalty as a security are then dealt with, and the final part of the book discusses insolvency in its various forms. There is an appendix setting out relevant statutory provisions.

The main body of the work contains just under three hundred pages, well and clearly printed, so it should be within the capacity of a law student to master it. It will also repay the practising lawyer, who looks through it, and then keeps it for reference when needed. The arrangement of the subject matter is logical and clear, while the fact that the items dealt with are brought together to show how the law affects property as such should stimulate thought, by comparison with finding those items scattered among the other possible headings under which they can be placed when looked at from a different point of view.

The table of statutes is well printed, in such a way that everything can be picked out quickly, and the table of cases is unusually ample. In accordance with the regular practice of these publishers, every case is provided with all references; quite an important feature in a book designed, at least in part, for students. We have noticed some tiresome mis-spellings, due perhaps to hasty proof-reading; these can be put right in the first reprinting, which we prophesy is likely to be needed fairly soon. It is by the malign fate attending every author of a law book, that the Law Reform (Enforcement of Contracts) Act, 1954, was passed just too late to be included. It will involve recasting several pages in the next edition, and meantime should be noted in the margin. Even allowing for these points of criticism, we have not for some time come across a more useful book, for serving the parallel interests of the student and the lawyer.

Scotland Yard. By Sir Harold Scott. Published by Andre Deutsch, Ltd. Price 16s.

It is impossible to know whether he even considered the point, but one is left with the impression that Sir Harold Scott was determined that no one should be entitled to accuse him of trying to write a thriller. This clearly written and well arranged book is full of interesting facts about the organization and recent history of the Metropolitan Police, but the reader has to extract the interest from the facts rather than from the style in which they are presented.

Prior to his appointment in 1945, as Commissioner of Police for the Metropolis, Sir Harold had since 1911 been a permanent civil servant, and his appointment as Commissioner to succeed Air Vice-Marshal Sir Philip Game caused considerable surprise. The author states that Mr. Morrison broke away from the well established tradition that the Commissioner should be chosen from among senior officers of the armed forces because he wished to emphasize the civilian character of the police force and thought that in the post-war world the work would call rather for experience of administration in a big civil department than for experience in the military field. This is a matter of past history, and does not call for comment now.

Sir Harold found the work of his new post of absorbing interest, and he tells in this book the story of his eight years of office during which the police had to cope with the post-war crime wave, with the difficulties due to lack of man power, and with important state occasions. The problems of organization involved in arranging the work of the police during the Coronation and during the visit of Marshal Tito are clearly set out. We read about the author's views on the relationship of police, press and public, and the changes he made to ensure that the depleted numbers in the police in coping with their increasing problems should have as much help as possible from the press and the public.

The different sections of the metropolitan force—the headquarters at Scotland Yard, the four districts, the criminal record office, the fingerprint department, the forensic science laboratory, the criminal investigation department, the mounted branch, the women police, the police dogs, and so on—are all dealt with in greater or less detail. Interesting facts about the police investigations in various important trials are given, and one wonders whether some of the information may not be helpful to criminals who are always anxious to know all they can about how the police do their work. Presumably, however, Sir Harold was alive to that possibility and must have decided that nothing which he wrote would be likely to hamper the efforts of the force which he was proud to lead.

This book should serve a useful purpose by enabling the public to realize the magnitude of the task which the police, on their behalf, have to undertake in maintaining law and order without at any time adopting the methods of the "police state." Too few of us realize that the keeping of the Queen's Peace is the task of all good citizens, and although the police are specialists in this field they are always entitled to expect full and prompt assistance from those whom they serve. A book which presents so clearly the police point of view deserves to be widely read.

We note with interest Sir Harold's view that a law which does not command general respect is apt to engender a disregard for law in general, and that practical experience makes the police officer agree that rules and regulations should be kept to a minimum and maintained only when the necessity for them is clearly shown. He adds that most police officers agree that unless a regulation can be properly enforced it had better not be made. We seem to remember reading this more than once in the columns of the *Justice of the Peace*, and we hope that our law makers, and above all our regulation makers, will bear it in mind.

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Cassels and Slade, JJ.)

R. *v.* NICOLOUDIS

July 28, 1954

Criminal Law—Forgery—Evidence—Cross-examination of prisoner as to previous offence where charge withdrawn—No issue whether prisoner knew cheque named in indictment to be forged—Criminal Evidence Act, 1898 (61 *and* 62 *Vict., c.* 36), *s.* 1, *proviso* (*f*) (*i*).

APPEAL against conviction.

The appellant was convicted at the Central Criminal Court before the Recorder of London of obtaining £120 by means of a forged cheque. The cheque bore the signature of D.W.G., a friend of the appellant. D.W.G. gave evidence that he had never signed the cheque and a bank cashier identified the appellant as the person who had presented the cheque at the bank and obtained the money. The appellant's defences were (*a*) that D.W.G. had signed the cheque himself, and (*b*) that he (the appellant) was not the person who presented the cheque at the bank. He did not raise the defence that, if the cheque was forged, he did not know it to be forged. The appellant stated, in his evidence, that he had never previously been convicted of any offence. Counsel for the Crown, by leave of the recorder, cross-examined the appellant as to his having been concerned with a forged cheque on a previous occasion, when he had been charged, but the proceedings had been discontinued. The appellant admitted that he had been charged as alleged. In view of the decision in *Maxwell* v. *Director of Public Prosecutions* (1935) 98 J.P. 387, counsel for the Crown did not seek to justify the cross-examination on the ground that the appellant had put his character in issue, but he contended that it was admissible to prove that the appellant knew the cheque named in the indictment to be forged.

Held, that if the issue in the case had been whether the appellant knew the cheque named in the indictment to be forged, the cross-examination might well have been admissible, but, there being no such issue, cross-examination on a charge which had not proceeded to conviction was inadmissible, and the conviction must be quashed.

Counsel: *Noakes* for the appellant; *Durand* for the Crown.

Solicitors: *Summer & Co.*; *Solicitor, Metropolitan Police.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

CHANCERY DIVISION

(Before Danckwerts, J.)

Re BAKER. EASTBOURNE WATERWORKS *v.* THE OFFICIAL RECEIVER

July 19, 1954

Rates—Water rates—Not preferential debt in bankruptcy—"Parochial or other local rates"—Bankruptcy Act, 1914 (4 *and* 5 *Geo.* 5, *c.* 59), *s.* 33 (1) (*a*).

SPECIAL CASE in bankruptcy stated by the judge of the Tunbridge Wells County Court.

On Feb. 1, 1954, a receiving order was made against the debtor and on Feb. 28, 1954, he was adjudicated bankrupt. The official receiver was appointed trustee of the property of the debtor. The waterworks company carried on the undertaking of the supply of water in Eastbourne and district under powers regulated by the Eastbourne Waterworks Acts, 1859 to 1921. The company was a creditor of the debtor in respect of water rates, and on Mar. 1, 1954, lodged a proof in respect of them, claiming that they fell within the category of "all parochial or other local rates" within s. 33 (1) (*a*) of the Bankruptcy Act, 1914, so as to be payable in priority to all other debts.

Held, there was no analogy between a water rate, which was a charge for the supply of a marketable commodity, and a local rate, and, further, there was no resemblance between "water rate" as defined in s. 3, of the Waterworks Clauses Act, 1847, and "rate" as defined in s. 68 of the Rating and Valuation Act, 1925, and, therefore, water rates were not within s. 33 (1) (*a*) of the Bankruptcy Act, 1914, so as to be payable in priority.

Counsel: *G. C. D. S. Dunbar* for the Eastbourne Waterworks Company; *Muir V. S. Hunter* for the Official Receiver.

Solicitors: *Shelton, Cobb & Co.*, for *Coles & James*, Eastbourne; *Solicitor, Board of Trade.*

(Reported by R. D. H. Osborne, Esq., Barrister-at-Law.)

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Cassels and Slade, JJ.)

R. *v.* CAMBORNE JUSTICES. *Ex parte* PEARCE

July 21, 29, 1954

Justices—Clerk—Suspicion of bias—Information by sampling officer—Prosecution conducted by solicitor in whole-time employment of county council—Justices' clerk member of council, but not member of committee to whom sampling officer reported action.

APPLICATION for order of *certiorari*.

The applicant, Henry Pearce, was convicted before the Camborne (Cornwall) justices of selling adulterated milk, for which he was fined £20, and of obstructing a milk and dairies inspector in the execution of his duty, for which he was fined £2. He obtained leave to apply for an order of *certiorari* on the ground of suspicion of bias on the part of the justices' clerk.

The informations were laid by a sampling officer of the Cornwall county council, and the prosecution was conducted by a solicitor in the whole time employment of the council. Throughout the hearing Mr. D. W. Thomas, a solicitor, acted as clerk to the justices. He did not retire with them, but he was sent for by the chairman and requested to advise them on a point of law, which he did, and he then returned into court. While he was with the justices, he did not discuss the facts of the case with them, and there was no allegation that he had in any way improperly attempted to influence the justices in their decision. The complaint was that at the time he was a member of the county council, though he was not a member of the committee to which the sampling officer had reported his action. It was alleged that there was, therefore, a reasonable suspicion that bias might arise.

Held, that any direct pecuniary or proprietary interest in the subject-matter of a proceeding, however small, acted as an automatic disqualification of any person adjudicating or assisting in adjudication, and that in such a case the law assumed bias; to disqualify a person from acting on the ground of interest other than pecuniary or proprietary, the test to be applied was that laid down in *R.* v. *Bradford Justices* (1866) 30 J.P. 293, that "a real likelihood of bias" must be shown, and that must be made to appear not only from the materials in fact ascertained by the party complaining, but also from such further facts as he might readily have ascertained and easily verified in the course of his inquiries; no such "real likelihood of bias" had been established in the present case, and no order of *certiorari* would issue.

Counsel: *Malcolm Wright, Q.C., Simpson Pedler*, for the applicant; *Wrightson*, for the prosecutor; *Laskey* for the justices; as *amici curiae Sir Reginald Manningham-Buller, Q.C. (S.-G.)*, and *J. P. Ashworth*.

Solicitors: *Stephens & Scown*, St. Austell; *C. W. Doré*, deputy clerk to Cornwall County Council; *Burton, Yeates & Hart*, for *Vivian Thomas & Jervis*, Penzance; *Treasury Solicitor*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

AICHROTH *v.* COTTIE

July 27, 1954

Road Traffic—Driving while disqualified—Sentence of imprisonment —"Special circumstances"—Sudden and serious emergency—Road Traffic Act, 1930 (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 7 (4).

CASE STATED by County of London Sessions.

At Hampstead Magistrates' Court an information was preferred by the respondent, Cottie, a police officer, charging the appellant, Aichroth, with having driven a motor vehicle on a road while disqualified for holding a licence.

On June 9, 1953, the appellant was convicted at Marylebone Magistrate's Court of careless driving and disqualified for driving for three months. At about 5 *a.m.* on the morning of June 22, 1953, he was told by his foreman on the telephone that the dough mixing machine at his bakery had broken down. The keys of the store in the bakery where the tools were kept were in his possession, and if the dough mixing machine was not repaired the material would be wasted and the Monday morning supply for the bakery's 5,000 retail and 500 wholesale customers would be spoilt. There were no taxis about, but the appellant made no inquiry as to any car hire services being available. He drove his motor vehicle from his home at West Norwood to his bakery business at Hampstead.

The appellant contended that those circumstances could in law amount to "special circumstances" within s. 7 (4) of the Road Traffic Act, 1930, justifying the court in not passing a sentence of imprisonment.

The County of London Sessions were of opinion that the circumstances were in law special to the offender and not special to the offence and that it was not open to them to hold that a fine would be adequate punishment, and they dismissed the appeal. The appellant appealed to the Divisional Court.

Held, that it was a reasonable deduction from what the court had said in *Whittall* v. *Kirby* (1946) 111 J.P. 1, that a sudden emergency, provided that it was serious enough and could not reasonably be dealt with in any other way, could amount to a "special circumstance" within s. 7 (4). The case must, therefore, be remitted to the sessions to determine whether the circumstances in which the appellant had driven the car were in law "special circumstances."

Counsel: *Edward Clarke* for the appellant; *Wrightson* for the respondent.

Solicitors: *Wontner & Sons*; *Solicitor, Metropolitan Police*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

GEORGE BALL & SONS, LTD. *v.* SILL

July 26, 1954

Building—Building regulations—Lack of guard-rails on roof—Flat roof under construction—"Working place"—Building (Safety, Health and Welfare) Regulations, 1948 (*S.I.* 1948, *No.* 1145), *reg.* 24 (1).

CASE STATED by Southport justices.

At a court of summary jurisdiction at Southport, an information was preferred by the respondent, Albert Douglas Sill, an inspector of factories, charging the appellants, George Ball & Sons, Ltd., building contractors, with contravening reg. 24 (1) of the Building (Safety, Health and Welfare) Regulations, 1948, which provides: "... every side of a working platform or working place, being a side thereof from which a person is liable to fall a distance of more than 6ft. 6in., shall be provided with a suitable guard-rail or guard-rails of adequate strength, to a height of at least three feet above the platform or place and above any raised standing place on the platform, and with toe-boards up to a sufficient height being in no case less than eight inches and so placed as to prevent so far as possible the fall of persons, materials and tools from such platform or place." The appellants were at work on a building which had reached the third storey, and it was intended to erect another storey over it. It was decided to make a flat roof by covering the surface with granolithic, a durable covering. The roof was 150 by fifty feet and over forty feet from the ground. One of the workmen had occasion to go to the edge of the roof, where, there being no guard-rail, he overbalanced, fell to the ground, and was killed. The justices convicted the appellants, who appealed on the ground that the regulation did not apply because the roof was not a "working place" within the meaning of the regulation.

Held, that "working-place" meant a place where work was being done, and the decision of the justices was right. *Montgomery* v. *A. Monk & Co. Ltd.* [1954] 1 All E.R. 252 was distinguishable on the ground that in that case the accident had nothing to do with a fall off the side of a building. The appeal, accordingly, must be dismissed.

Counsel: *Forrest, Q.C.*, and *C. M. Clothier*, for the appellants; *Gumbel* for the respondent.

Solicitors: *Lightbounds, Jones & Co.*, for *E. R. Hoskinson, Montgomery & Co.*, Liverpool; *Solicitor, Ministry of Labour and National Service*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

ADDITIONS TO COMMISSIONS

HIGH WYCOMBE

Mrs. Gladys Ivy Strong, Cave Cottage, West Wycombe.

Edmund Ronald Tucker, The Royal Grammar School, High Wycombe.

HOME CHAT

What is so refreshing about the profession of journalism is the wideness of its ambit and the catholicity of its tastes. It is a moot question whether supply creates demand or *vice versa*; are the writers giving the public what the writers think is good for it (on the stern, Victorian-parental principle of "You'll eat your milk-pudding, *and* like it!")? Or are the readers in the position of the character in Plautus, who speaks the famous line:

Homo sum: humani nihil a me alienum puto—
"I'm human, so everything human interests me"?

Certain it is that all levels of taste and intelligence are catered for; people of every section and cross-section of the community, according to age, sex, occupation, pastime, politics, philosophy, religion and aesthetic taste, can find at least one periodical to suit them. Among the national and provincial newspapers, alone, there are innumerable gradations, ranging between extremes of objectivity and fanaticism, seriousness and triviality, wholesomeness and prurience, style and illiteracy. The newspapers, however, form but a small proportion of all periodicals published. This journal is but one of many designed for lawyers; the medical men, the architects and surveyors, the accountants and actuaries, have theirs; and so has the practitioner of every other profession, trade and occupation—tinker, tailor, soldier, sailor; the butcher, the baker and the candlestick-maker.

"Some books" in Bacon's words "are to be tasted; others to be swallowed; and some few to be chewed and digested." In this matter of mental pabulum it is only in extreme cases that one man's meat is another's poison; but it is always true that what is a light *hors d'oeuvre* for A may prove a heavy and indigestible meal for B. A learned article that would be avidly devoured in the Temple or Lincoln's Inn would produce only nausea in Throgmorton Avenue or Harley Street; the fat-stock prices in the columns of the *Farmers' Weekly* are unlikely to whet the appetites of readers of the *Classical Review*. *Chacun à son goût*.

It would be a stimulating holiday-task for one part of the world to find out how the other parts live—for addicts to one kind of periodical to take in and study a paper of an entirely different kind. The regular reader of the *Justice of the Peace and Local Government Review* may care to turn for relaxation to the glossy pages of the Women's Weeklies. The experiment will be worth his while; we warrant he will find the same fascination as did Keats "on first looking into Chapman's Homer":

"Then felt I like some watcher of the skies
When a new planet swims into his ken;
Or like stout Cortez, when with eagle-eyes
He stared at the Pacific—and all his men
Look'd at each other with a wild surmise—
Silent, upon a peak in Darien."

From a Purgatory of acts and by-laws, practice and procedure, town-planning schemes and motor-vehicle regulations, he will find himself transplanted to a Paradise of clothes, cookery and cosmetics, gaiety, glamour and gush. From a world where married women figure chiefly as litigants in Courts of Summary Jurisdiction, he will be transported to a planet where every marriage is a Romance, where a few simple beauty-tips suffice for participation in the exciting game of How to Get Your Man, without being bothered (once you have got him) with the ancillary problem of How to Keep Him. Lifelong marital bliss (as the coloured illustrations vividly demonstrate) can be attained by rule of thumb—the right shade of lipstick, the latest in hairwaves, the correct dentifrice, the fashionable figure, the brightest clothes and the most powerful of detergents. Not that practical hints on homemaking are entirely lacking. The young housewife can cook, darn, wash and mend, make her own clothes, keep herself and her children thoroughly well-groomed, her home neat and tidy, her rooms freshly decorated, and her friends and her husband's business-associates hospitably entertained, on the spur of the moment, so long as she remembers to keep in the "frig." a tin or two of Snooks's Baked Beans and a packet of What's-his-Name's Synthetic Soups. Life is so simple in the Eden that women-editors inhabit.

However, thirty or forty years of unadulterated Eden might become cloying, and that is where our tame Psychologist comes in. More subtle than the Serpent of *Genesis*, he does not crudely tempt his Eve to pluck raw fruits from the Tree of Knowledge, but offers her the Facts of Life, sugared and preserved, in attractively-packed cartons. These are of two or three well-known brands—the Short Story, the Serial and the Correspondence Column. Differing only in the size, shape and colour of the packages, the ingredients are always the same; or, if we may change the metaphor, they are but variations on a single theme. The Short Story (with stock weekly illustration of a couple entwined in a passionate embrace) embodies Every Girl's Dream; the Serial (same illustration—positions reversed) tells her How to Make It Come True; while the Correspondence Column (not illustrated, but filled with Real Human Stories) advises her, when things are not working out as they should, What to Do About It. Some of the letters are so extraordinarily naive that it is difficult to believe that they have not been composed *ad hoc* in the editorial room ("I am nearly sixteen and have a boy-friend the same age. When he takes me dancing he often looks at other girls. Do you think he can really be in love and wants to marry me?") The counsel given is always sympathetic and strictly "moral"; often practical, generally brisk and sensible; occasionally mysterious ("Please write to me privately and enclose a stamped, addressed envelope"). Even the Dreadful Warning is so tactfully conveyed as to succeed, at one and the same time, in snubbing the inquisitive, enlightening the ignorant, indulging the sentimental, helping the inquirer and edifying the writer. What other vehicle of the press can boast as proud a record as that?

A.L.P.

PERSONALIA

APPOINTMENTS

Mr. Arthur James Vernon Goldfinch, deputy town clerk of Bexley, Kent, since 1938, has been appointed town clerk to succeed Mr. William Woodward, who is retiring on October 5. Mr. Woodward was admitted in 1925; Mr. Goldfinch in 1932.

Mr. W. Trickett, deputy clerk to St. Neots, Hunts, urban district council, has been appointed clerk to Wivenhoe, Essex, urban district council.

Mr. A. P. Marshall, Q.C., has had his appointment as deputy chairman of the Court of Quarter Sessions for the county of Cornwall, approved by the Queen.

Mr. Royston Bernard Howard has been appointed assistant official receiver for the Bankruptcy District of the County Courts of Sheffield, Barnsley and Chesterfield. This appointment takes effect from August 30, 1954.

RETIREMENTS

Mr. W. D. Hill, clerk to the Haverfordwest, Pembs, rural district council, is to resign, with effect from September 20, 1954. Mr. Hill will have completed forty years of local government service on that date. His successor will be Mr. H. J. Dickman, the present deputy clerk.

OBITUARY

Mr. John Duff, former town clerk of Lewisham metropolitan borough council, has died at the age of seventy-seven.

Mr. S. R. Jones, a former clerk to Lleyn, Caernarvonshire rural district council, has died.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Byelaws—*Enforcement—Powers of police.*

The local borough council (who do not have their own police force) have made byelaws for the good rule and government of the borough in pursuance of s. 249 of the Local Government Act, 1933.

Whilst it is quite clear that the borough council can instruct any of its duly authorized officers to conduct prosecutions on behalf of the council to enforce the byelaws, and cannot delegate their authority to the police, is it in order for the police to institute proceedings of their own volition without authority from the council, *i.e.*, have both the borough council and the police concurrent powers for the enforcing of the byelaws? TWINOP.

Answer.

We think a police officer may be the informant and prosecute in his own name. The general principle is that any person may prosecute for a criminal offence, unless the right to prosecute is restricted by enactment. In regard to many byelaws it is so restricted by s. 253 of the Public Health Act, 1875, and s. 298 of the Public Health Act, 1936.

2.—Criminal Law—*Seaman engaging to serve on trawler, obtaining cash advance, and then engaging to serve on another boat—Second cash advance obtained—What offence.*

As a yearly subscriber to your journal, I shall be very much obliged if you will kindly give me the benefit of your opinion in connexion with the following matter:

A engages to serve as a deckhand on a steam trawler, and is ordered to join his ship at a given time. He obtains a cash advance of £2, but before the vessel is due to sail, he signs on another one, belonging to different owners, and receives a further cash advance of £2. He sails on the second trawler, but does not sign off the first one, and retains both advances.

There would appear to be an offence of wilful disobedience under s. 376 of the Merchant Shipping Act, 1894, in respect of the first engagement. Your opinion is sought as to whether any other offence, and if so what, is committed by A in engaging to serve on the first boat, obtaining an advance of £2 and failing to sail, and in engaging to serve on the second boat and obtaining a further advance of £2, when he has already engaged to serve on the first one.

In engaging to serve on the second vessel A makes no mention of having signed on the first one, but does not make any specific claim that he is free to sign on the second, although this would be the obvious implication. SKATE.

Answer.

We agree that there is an offence under s. 376, *supra*. As to obtaining the second cash advances, it is arguable that the man obtained the money by false pretences, in that his conduct implied, though he did not say so, that he was free to join the vessel and not under another engagement. We think, however, that this would be rather straining the law and that the first cash advance should be recovered as a debt.

If it could be proved that the man had adopted this practice on a number of occasions, so as to show a system, then it would be easier to prove both a false pretence and an intent to defraud, but unless there are facts other than those stated in the question we do not think a charge of false pretences would be likely to succeed.

3.—Hackney Carriage—*Plying for hire—No distinguishing mark on the carriage—Driver waiting close at hand.*

In connexion with the above, bearing in mind the case law on the subject and in particular *Sales* v. *Lake* (1922) 86 J.P. 80, and *Gilbert* v. *McKay* [1946] 1 All E.R. 458; 110 J.P. 186, will you kindly inform me whether in your opinion there is plying for hire if the vehicle has no signs on it to show that it is for hire.

I have in mind, in this area, a number of hire car operators, some of whom have cars which are not easily distinguished from private cars. Nevertheless they are at times found standing on the highway, the driver either being in an office a short distance away or near at hand.

Any information and any additional definition of plying for hire which would clarify this matter will be appreciated. JISDIN.

Answer.

It is stated in *Stone*, 1953, p. 2345, note (*e*) that "plying for hire" has been held to mean seeking business with a carriage from the general public, and the test is whether the carriage is held out for the general accommodation of the public. It is not necessary that there should be any distinguishing marks on the vehicle, *see*, for example, *Allen* v. *Trowbridge* (1871) 35 J.P. 695, in which the carriage had no distinguishing mark and presented the appearance of a private carriage.

4.—Husband and Wife—*Submission of no case by defendant—Effect.*

On the hearing of an application, by a wife for a maintenance order and separation order against her husband, at the conclusion of the wife's evidence, the husband's solicitors submitted to the court that there was no case to answer. On the court ruling against him, the wife's solicitor then argued that that was the close of the husband's case and that, by making the submission, he had, in effect, elected not to call any evidence.

This does not seem to me to be consistent with the Magistrates' Courts Rules, 1952, or with the decision of *Yuill* v. *Yuill*, [1945] 1 All E.R. 183. For future guidance, I should be glad if you could let me know whether there has been any decision binding a magistrate's court on this question of submission of no case in matrimonial proceedings. SMATSEP.

Answer.

If the defendant was not put to his election, he is entitled, on the failure of his submission, to call evidence. Further, we consider it doubtful whether the cases on election apply to summary proceedings. We refer our learned correspondent to articles at 115 J.P.N. 178, and 111 J.P.N. 251, where the case law is discussed.

5.—Licensing—*Special order of exemption—Discretion of justices.*

As clerk to the licensing justices for three separate districts I have received advance notice from the local Licensed Victuallers' Association, whose members are drawn from all three districts, that it is intended to apply for extension of permitted hours (under s. 107 of the Licensing Act, 1953) in respect of Easter Monday and Whit Monday as "special occasions." These are new applications, and there would appear to be no strictly local reasons to support them, except perhaps the fact that quite a considerable volume of coastal traffic passes through this area at Bank holiday times. The police are likely to be objectors. Is the matter entirely one for the justices' discretion? NOJA.

Answer.

The grant or refusal of a special order of exemption is entirely a matter for the discretion of the justices to whom application is made under ss. 107 and 108 of the Licensing Act, 1953. "What is a special occasion must necessarily be a question of fact in each locality: each locality may very well have its own meaning to these words, and it is for the justices in each district to say whether a certain time and place are within the description" (*per* Lord Coleridge, C.J., in *Devine* v. *Keeling* (1888) 50 J.P. 551.

6.—Licensing—*Special order of exemption—Unlicensed hotel registered as a club—Application for function not a club purpose.*

A is the proprietor of an hotel on which premises he also conducts a registered proprietary club.

A has been requested to cater for a wedding reception at the hotel between the hours of 2 *p.m.* and 5 *p.m.*, which is outside the club's permitted hours. Neither the bride's parents nor the bride or bridegroom are members of the club, though some persons attending the reception will be. The reception will be of the usual type and will be paid for by the bride's father. The food will be supplied by the hotel and the liquor purchased in the usual way by the bride's father from wine and spirit merchants, though it is possible if he becomes a member of the club before the wedding that he will buy it from the club. It was thought that as the hotel forms part of the club premises a special order of exemption should be obtained to cover the supplying and consumption of alcoholic liquor during non-permitted hours. The application was made and the order refused, on the grounds, apparently, that this was not a special occasion so far as the club was concerned. This decision creates a hardship for both the hotel proprietor and the wedding party. So far as the latter are concerned the bride's father could entertain them in his own home without any form of licence, or in an unlicensed hotel also without a licence. So far as the hotel proprietor is concerned, all he wishes to do is to serve his customers and in this instance he is not particularly concerned whether the liquor is purchased from the club or not.

Your opinion is sought on the following points:

1. Are we right in assuming that because of the existence of the licensed club a special order of exemption is required in the above circumstances?

2. If so, do you think the magistrates' decision to refuse the application for a special order of exemption well-founded, and, bearing in mind the general discretion of magistrates in these matters, have you any information as to the general practice in other parts of the country?

3. One solution to the problem which has been considered is that the hotel proprietor should instruct a full licensee to apply for an occasional licence, but it has been suggested that this is not permissible under the Licensing Act. Do you know of any authority to this effect ?

4. If you consider the magistrates' decision correct can you suggest any other means by which it would be possible to hold the reception at the hotel without breaking the licensing laws ? ORUM.

Answer.

We assume that the hotel is not itself licensed premises.

1. Intoxicating liquor may not be supplied or consumed in the premises of a registered club outside permitted hours (Licensing Act, 1953, s. 100 (1)). Therefore, the scheme outlined by our correspondent can only take place if a special order of exemption is granted.

2. We think it quite well-founded. The wedding reception described has nothing about it that may be described as a club occasion. We would be surprised to hear of any magistrates' court granting to a registered club a facility which enables the club premises to be used as though they were on-licensed premises.

3. This is permissible under the Licensing Act, 1953, s. 148—*see Brown* v. *Drew* [1953] 2 All E.R. 689 ; 117 J.P. 435.

4. If the reception is held in a part of the hotel premises which is not part of the registered club (only possible if the premises of the registered club are defined by metes and bounds in the register of clubs) the bride's father may entertain his guests with a free distribution of intoxicating liquor which is his own property.

7.—Local Government Act, 1933—*Disqualification of councillor—Employment under county committee.*

The county council as the civil defence authority employ an official who is a member of the district council. The district council appoint five members to a joint divisional committee (to which two other local authorities also appoint members) and that joint divisional committee then appoints one member to the county civil defence committee. The member so appointed is in fact a member of the district council. Having regard to s. 59 (2) of the Local Government Act, 1933, your opinion is sought as to whether the member employed as an official is disqualified by reason of his being so employed under the direction of the county civil defence committee to which the joint divisional committee, on which the district council is represented, appoint a member. CIVILE.

Answer.

The district councillor who is a member of the county civil defence committee got there by appointment of the joint divisional committee, and not by nomination of his own council. The case is not, therefore, within the exact words of s. 59 (2), and, since s. 59 (2) is a penal provision (when read in conjunction with s. 84) it is presumably to be construed strictly. At the same time, the case seems to be within the mischief at which the subsection is aimed, despite the indirect mode of appointing the county committee, and the official who is also a direct councillor is in a position which might at least be challenged. He might be wise to resign his membership of the district council.

8.—Local Land Charges—*Town and Country Planning Act*, 1947, *s.* 14—*Outline permission.*

Is it considered that the granting of an outline planning permission subject to a condition requiring the submission before development commences of detailed particulars of design, external appearance, and access, should be registered as a planning charge in the local land charges register ? CONEY.

Answer.

Yes, in our opinion.

9.—Magistrates—*Jurisdiction and powers—Examining magistrates—Charge of carnal knowledge of girl under sixteen—Defence of reasonable belief that girl over sixteen.*

A young man, aged twenty-three, was charged with carnal knowledge of a girl under the age of sixteen. He admitted that he had had intercourse with her on more than one occasion but of course pleaded the defence under s. 2 of the Criminal Law Amendment Act, 1922. The magistrates were satisfied that he had an honest belief that the girl was over sixteen years of age and reasonable cause for that belief and, therefore, dismissed the charge. (The police seemed aggrieved, for immediately previously another young man six months older had had to be committed for trial when in fact a great deal of the blame lies on the girl, who is now in an approved school !)

The question is whether it is right for the magistrates to dismiss the charge in such circumstances. The matter was not argued in court, but the police held the view that the magistrates have no power to try the case, and therefore such a defence can only be decided on by the court of trial. This makes nonsense of s. 7 of the Magistrates' Courts Act, which says that the magistrates are to consider any statement made by the accused before deciding whether to commit the accused for trial. In this case the accused gave evidence on oath. A further point of interest is that the police pointed out that the accused admitted that he had had intercourse on three occasions with the girl over a period of two days, and said that they could have brought three charges, for the last two of which the defence under the 1922 Act would not have been available. This would seem to be correct, and presumably there is nothing to stop them starting again, even though the present charge was meant to cover all three incidents. JETHRO.

Answer.

R. v. *Forde* (1923) 87 J.P. 76 makes it clear that the question of reasonable belief is an issue to be decided by the jury, and not by the judge. We cannot say, where the evidence on this point is overwhelming and really not in dispute, that magistrates are not justified in refusing to commit on this ground. But since it is an issue for the jury at the trial we feel that magistrates must be very careful to avoid usurping the functions of the jury and trying this issue themselves. Each separate act of intercourse is a separate offence. We do not understand what is meant by the statement that " the present charge was *meant* to cover all three incidents." On the question of the availability of the defence above referred to when there are different charges, *see R.* v. *Rider* (1954) 118 J.P. 73.

10.—Magistrates—*Practice and procedure—Police informant as advocate in (a) summary cases and (b) before examining justices.*

On p. 94 of *Hayward & Wright's Office of Magistrate* (ninth edition), in the chapter dealing with the practice in indictable offences not tried summarily, appears a paragraph which says " The informant may not conduct the case as he can upon a summary charge, as theoretically the prosecution is directly by the Crown, but a barrister or solicitor has the fullest right of advocacy on behalf of the prosecution. In an indictable case, it is thus irregular for a police officer to make an opening statement or to examine or cross-examine witnesses or otherwise to act as an unqualified advocate."

My justices have brought this to my notice and asked whether it is in order for a police officer to conduct an inquiry before examining justices.

In the 1953 edition of *Stone*, at p. 2280, it is quite clear that on a summary trial a police officer can conduct the case, but the paragraph goes on to state that no such power is given by statute on indictment. I can find no authority which lays down that counsel or solicitor must conduct an inquiry before examining justices and should be obliged for an opinion on the following points :

(*a*) Can a police officer conduct a prosecution in an indictable case dealt with summarily ?

(*b*) Can a police officer conduct the hearing of the prosecution's evidence before examining justices ? JEVIL.

Answer.

(*a*) Yes, provided the information was laid by him or on his behalf (*see* r. 4 Magistrates' Courts Rules, 1952). By s. 19 (5) Magistrates' Courts Act, 1952, the court proceeds to " the summary trial of the information," and thereafter the procedure is regulated by ss. 13 to 17 of the Act, and by r. 17 of the Rules.

(*b*) No. There is no authority for him to do so, and the inference from r. 5 (7) of the Rules is to the contrary.

11.—Magistrates—*Practice and procedure—Sum recoverable as a civil debt—Procedure.*

A dispute has arisen with the county council regarding the method by which the county council proceed by way of judgment summons against defendants arising out of orders under s. 43 of the National Assistance Act, 1948.

In the first instance the county council issue a complaint to recover assistance from defendants liable to maintain their near relatives. The order is made to cover all past maintenance, adds that the defendant in the future has to pay to the county council future weekly maintenance, and finally states that the defendant has to pay by weekly instalments equivalent to the weekly maintenance plus, say, 5*s*. for past maintenance. If this order is not complied with the county council then issue a judgment summons exactly following form 86 under the Magistrates' Courts Rules. They, however, do not ask for a committal in respect of the total sum in default as per the first section of the particulars of that form, but ask for a committal only upon the amount on which no further proceedings will be taken if the defendant pays in the meantime, in accordance with the second half of the particulars on this form. I contend that the commitment should be issued in respect of the total sum in default.

If you will refer to the form of commitment No. 88 you will see that there is only provision for dealing with the matter in the way that I suggest unless the whole of this form 88 is drastically altered. If the county council are correct, then of course they could issue

successive judgment summonses arising out of the same order in respect of each instalment which may be in arrear. I refer you to ss. 63 (3) and 64 (1) of the Magistrates' Courts Act. I also refer you to the interpretation of the term " sum enforceable as a civil debt " (s. 126 of the Magistrates' Courts Act) and to para. 4 of sch. 3 to that Act, which gives a maximum period of six weeks' imprisonment in respect of such a civil debt. JOCELYN.

Answer.

If we understand the position correctly, it appears that a necessary step is being omitted from the procedure. Section 43, *supra*, provides that the person liable shall be ordered to pay such sum or sums as the court considers appropriate. It is not until *after* that order is made that any sum becomes due to the council. Then comes s. 56 (1) of the 1948 Act, by which any sum due under the Act to the council is made *recoverable* summarily as a civil debt. If sums so due are not paid, the next step is a complaint under s. 50 of the Magistrates' Courts Act for an order to pay the amount then due. It is only after such an order is made that there is any sum, within s. 126, *ibid.*, which is enforceable as a civil debt by judgment summons under s. 73, *ibid.*, and the amount to be enforced is that part of the sum specified in the order under s. 50 which remains unpaid.

12.—Public Health Act, 1936—*Public Health Act*, 1925, *s.* 21—*Surface water channel.*

Three adjoining houses form part of a larger block. For at least twenty years two of the houses have been in common ownership, and the third is separately owned. Fronted by small gardens and a forecourt they abut on a classified county road maintained by a local authority (not a claiming authority) under delegated powers from the county council. The houses were built before 1900. Roof water is collected into a common downpipe on the houses in common ownership and into a separate downpipe for the third house. Both downpipes discharge into a common iron gully which crosses flush with the surface of the pavement and itself discharges into the road-side channel. Presumably the iron gully was constructed at the same time as the houses. This gully has now become defective where it crosses the pavement and is in need of repair. The Public Health Acts Amendment Act, 1890, was adopted in 1891 and Part II of the Public Health Act, 1925, was adopted in 1926.

It has been argued that the iron gully is a public sewer within the meaning of the Public Health Act, 1936, and that the local authority are responsible for the repairs needed.

Your opinion is therefore sought as to whether :

(1) The iron gully is in fact a public sewer as alleged.

(2) The local authority in any case may take action under s. 21 of the Public Health Act, 1925.

(3) Action may be taken under either s. 24 or s. 39 of the Public Health Act, 1936. COGUL.

Answer.

It seems clear on the facts that so much of the channel as is below the point at which the separate drains joined it had become a sewer as defined in the Public Health Act, 1875, and accordingly had vested in the council before the Act of 1936 was passed. The liability therefore remained with the council after 1936, and s. 21 of the Act of 1925, which was directed to another sort of case, does not help them.

13.—Road Traffic Acts—*Goods Vehicles (Keeping of Records) Regulations—Partner of licence holder as a person employed by the holder to drive an authorized vehicle.*

A is charged, as driver of a " C " licensed vehicle, with failing to keep a current record, and B is charged as the holder of the " C " licence in respect of the said vehicle with failing to cause a current record to be kept, both contrary to reg. 6 (1) of the Goods Vehicles (Keeping of Records) Regulations, 1935. Regulation 5 of the said regulations gives the following definitions :

(i) " The holder of a licence " means the person to whom that licence was granted and issued.

(ii) " Driver " means a person employed by the holder of a licence as a driver of an authorized vehicle or as driver and on work in connexion with the vehicle or its load and includes the holder of a licence when acting as such a driver and the expression " driving " shall be construed accordingly.

The facts proved are :

(i) A and B and others are partners in a firm owning the vehicle in question.

(ii) B is the holder of the " C " licence it having been granted and issued in his name, not in the name of the firm.

Can A, being a partner in the same firm as B, be said to be employed by B, bringing him (A) within the definition of driver ? JEMPLEY.

Answer.

In our view one person is " employed " by another if the latter uses the services of the former for a particular purpose. Specific payment is not necessary. This view is supported by *R.* v. *Foulkes* (1875) 39 J.P. 501. We think, on the facts, that A is employed by B to drive the vehicle, and is the driver within the meaning of the regulations. It seems probable that, indirectly, A receives payment for his services, because one assumes that the vehicle is used for the benefit of the partnership and that A has his share of any profits which are earned.

14.—Road Traffic Acts—*Lights on vehicles—"Spotlight"—Use otherwise than in conditions of snow or fog—Vehicle first registered on or after January* 1, 1952.

A case has been reported to me of the use of a " spotlight " on a motor-car registered after January 1, 1952, other than in conditions of fog or whilst snow was falling. There was no question of the light dazzling any person and the case has been reported under reg. 8 of the Road Vehicles Lighting Regulations, 1950.

On reference to P.P. No. 8 at 116 J.P.N. 690, I find that no mention is made of the difference which the original date of registration of the vehicle would appear to make to the question. If it is true to say that reg. 8 creates the offence of " using," I cannot see the point of including in the proviso to reg. 9 the height of *2ft. 2ins.*, thus creating the same offence with it being also necessary to prove that the lamp did not comply with the other sub-paragraphs. JAZSPOT.

Answer.

We agree that there is an apparent contradiction between regs. 8 and 9, but in the case of a penal provision any doubt must be resolved in favour of the defendant. We felt, and we still feel, that the mention in the proviso to reg. 9 (2) of sub-para. (1) and the omission therefrom of any reference to sub-para. (iv) have the effect of legalizing the use of a spotlight, even if less than 2 *ft.* 2 *ins.* from the ground, on a vehicle first registered on or after January 1, 1952, if it complies with reg. 9 (2) (iv). If this is not so we see no point in selecting sub-para. (i) for special mention in the proviso.

15.—Tort—*Damage to property by vehicle when avoiding collision—No negligence by driver.*

A is driving his motor-car at an excessive speed along a highway. B, who is the driver of another motor-car proceeding in the opposite direction, has to swerve on to the grass verge to avoid a collision with A. In so doing B hits and damages a boundary fence which is the property of C. A does not stop and is unknown. B admits that the damage was caused by his deliberate action in driving off the metalled carriageway but refuses to pay for the repairs to the fence. Bearing in mind that there is no evidence of negligence on B's part will you kindly advise whether C would be successful in an action against B to recover the cost of the repairs. ANEG.

Answer.

We should certainly not advise C to start proceedings. On the facts given, we do not see how a claim could be drawn.

16.—Weights and Measures—*Contract for house refuse, etc.—Whether contract may provide for collection by the cubic yard.*

A local authority proposes to put out to contract the collection of house refuse by the cubic yard. Collection is to be made in vehicles whose bodies are calibrated and stamped under the Weights and Measures Act, 1936 and Regulations of 1938. None of the refuse is, or contains any appreciable proportion of, sand or ballast.

By s. 19 of the Weights and Measures Act, 1878, every contract for work done by measure must be according to one of the Imperial measures ascertained by that Act, or to some multiple or part thereof ; otherwise to be void. Sections 11 and 12 of the Act of 1878 legalize certain measures derived from the Imperial yard, but no mention is made of measures of cubic capacity. Section 1 (4) of the Weights and Measures Act, 1936, makes special provision in this respect for transactions in sand and ballast. Section 2 (3) of the 1936 Act declares that every receptacle (whether forming part of a vehicle or not) shall be deemed to be a measure for the purposes of the Weights and Measures Acts, 1878-1926.

Your valued opinion is desired (*a*) as to the propriety of the terms of the proposed refuse contract, and (*b*) generally, as to the use of vehicles stamped ostensibly as sand and ballast vehicles, but actually used for trade in materials other than sand and ballast, *e.g.*, soil, loam, peat, tarmac, agricultural lime, farmyard manure. S. BLURRY.

Answer.

Since s. 1 (4) of the Act of 1936 provides that a contract for dealing with sand or ballast by the cubic yard shall not be rendered void or illegal by reason of s. 19 of the Act of 1878, it would seem that dealing with other materials by the cubic yard is not permitted and that the contract is void. As to the use of the vehicle, that does not seem to be open to objection so long as it is used for conveyance only and not for measuring quantity.

BOROUGH AND PORT HEALTH DISTRICT OF FLEETWOOD

Appointment of Town Clerk and Clerk to the Port Health Authority

APPLICATIONS for these appointments are invited from Solicitors having considerable Local Government experience. Salary commences at £1,350 rising by four annual increments of £50 to a maximum of £1,550 per annum.

The appointments will be subject to the Recommendations regarding salary and conditions of service of the Joint Negotiating Committee for Town Clerks and District Council Clerks; to three months' notice on either side; to the provisions of the Local Government Superannuation Acts; and to the passing of a medical examination.

Applications, in an envelope endorsed "Town Clerk," stating age, education, qualifications, present and past appointments, experience, etc., with the names and addresses of three persons to whom reference can be made, must reach the undersigned not later than August 31, 1954. Candidates should state whether they are related to any member or senior officer of the Council, and canvassing will disqualify.

J. I. KENNEDY,
Mayor.

Mayor's Parlour,
Town Hall, Fleetwood.

URBAN DISTRICT COUNCIL OF ESTON

ASSISTANT SOLICITOR required for Clerk and Solicitors Department at a salary in accordance with Grade Va (£650—£710) or Grade VII (£735—£810) according to the date of admission of the successful candidate. A tenancy of a house provided by the Council will be granted to the successful applicant if required. Further particulars may be obtained from the Clerk of the Council, Council Offices, Grangetown-on-Tees, Middlesbrough, to whom applications should be submitted not later than September 4, 1954.

T. MYRDDIN BAKER,
Clerk of the Council.

HOLLAND (LINCS.) COUNTY COUNCIL

**Appointment of Chief Clerk
Clerk of the County Council's Department**

APPLICATIONS are invited for the above appointment at a salary in accordance with A.P.T. Grade VIII (£785—£860 per annum) of the National Scales.

Applicants must be thoroughly experienced in the work of the Clerk's Department of a local authority. Experience of any of the following will be an advantage: registration of electors; elections; quarter sessions.

Further particulars and conditions of service may be obtained from the undersigned.

Closing date for applications is September 6.

H. A. H. WALTER,
Clerk of the County Council.

County Hall,
Boston,
Lincs.

NORFOLK COUNTY COUNCIL

Boys' Remand Home, Bramerton

APPLICATIONS are invited from married persons for the joint appointment of:

(1) Supervisory Assistant—salary £410 × £15 to £470 less £108 per annum for board and lodging.

(2) Assistant Matron—salary £350 × £15 to £410 less £108 per annum for board and lodging.

There is no accommodation for the children of resident staff.

The appointments will be subject to the provisions of the Local Government Superannuation Act and a satisfactory medical examination.

Application forms may be obtained from the Children's Officer, 23, Thorpe Road, Norwich, to whom completed forms should be returned by September 14, 1954.

CARMARTHENSHIRE MAGISTRATES' COURTS COMMITTEE

Amman Valley, Llandilo, Llandovery, Caio and Llangadock Petty Sessional Divisions (Group 2)

APPLICATIONS are invited for the appointment of a Clerical Assistant (Male) in the Office of the Clerk to the Justices for Group 2 at Llandilo.

Candidates should be competant shorthand typists and preference will be given to those with previous experience in a Justices' Clerk's Office. Ability to speak Welsh most desirable. The person appointed will be required to attend Courts to take notes and depositions. Salary: £495×£15—£540.

The appointment is superannuable and subject to one month's notice on either side. The successful candidate will be required to pass a medical examination.

Applications, giving age, present duties and previous experience with copies of two recent testimonials, to be sent to the undersigned by August 27, 1954.

Canvassing, directly or indirectly, will disqualify.

W. S. THOMAS,
Clerk to the Magistrates' Courts Committee.

County Hall,
Carmarthen.
August 6, 1954.

LEICESTERSHIRE AND RUTLAND COMBINED PROBATION AREAS COMMITTEE

PROBATION OFFICER (male) required full-time. Salary and conditions in accordance with Probation Rules. Applications, stating age, qualifications, experience and whether able to drive a car, with names of two referees, to reach Clerk to the Committee, County Offices, Grey Friars, Leicester, by September 1, 1954.

HEMEL HEMPSTEAD DEVELOPMENT Corporation invite applications for the post of LEGAL CLERK. Salary in the scale £570–£710, according to age and experience. Applicants must be capable of working with only slight supervision and must have conveyancing and litigation experience.

Contributory superannuation, with opportunity of entering or continuing in Local Government Superannuation Fund.

Housing accommodation will be provided.

Applications, giving full particulars of age, qualifications and experience, together with the names of two persons to whom reference may be made, and endorsed "Vacancy No. 123," should reach the undersigned not later than August 30.

W. O. HART,
General Manager.

Westbrook Hay,
Hemel Hempstead,
Herts.

When replying to advertisers please mention the Justice of the Peace and Local Government Review

REGISTER OF LAND AND ESTATE AGENTS, AUCTIONEERS, VALUERS, AND SURVEYORS

CHESHIRE

CHESTER—HARPER, WEBB & CO., Chartered Surveyors, Rating Specialists, 35 White Friars, Chester. Tel. 20685.

CORNWALL

FALMOUTH.—ROWE & KNOWLES, Strand, Falmouth. Tel.: 189 and 1308.

DEVON

AXMINSTER—ARNOLD L. BALDOCK, B.Sc., A.R.I.C.S., Chartered Surveyor, Valuer, Land Agent, Shute, Axminster. Tel. 2388.

EXETER.—RIPPON, BOSWELL & CO., F.A.I., 8 Queen Street, Exeter. Est. 1884. Tels. 3204 and 3592.

EXMOUTH.— PURNELL, DANIELL & MORRELL, 7 Exeter Road. Tel. 3775. Auctioneers and Estate Agents; Surveyors and Valuers. Also at Honiton and Sidmouth.

ILFRACOMBE, COMBEMARTIN, WOOLACOMBE.—GREEN, F.V.I., F.F.B., F.C.I.A., Estate Agent, Auctioneer, Valuer. Tel. Business 973. Home 800. Ilfracombe.

OKEHAMPTON, MID DEVON.—J. GORDON VICK, Chartered Surveyor, Chartered Auctioneer. Tel. 22.

ESSEX

ILFORD AND ALL ESSEX.—RANDALLS, Chartered Surveyors, Auctioneers, Valuers, 1 Medway Parade, Cranbrook Rd., Ilford. Est. 1884. Tel. ILFord 2201 (3 lines).

GLOUCESTERSHIRE

CIRENCESTER AND COTSWOLDS.—HOBBS & CHAMBERS, F.R.I.C.S., F.A.I., Market Place, Cirencester. (Tel. 62/63) and Faringdon, Berks.

HERTFORDSHIRE

BARNET & DISTRICT.—WHITE, SON & PILL, 13/15 High Street. Tel. 0086, and at New Barnet.

KENT

BECKENHAM—BROMLEY.—SUTCLIFFE, SON & PARTNERS, Estate Agents and Surveyors, The Old Cottage. Estate office, opp. Shortlands Station, Kent. Tel. RAV. 7201/6157. Also at 20 London Road, Bromley. RAV. 0185/7.

EAST KENT.—WORSFOLD & HAYWARD, offices at 3 Market Square, Dover; 11 Queen Street, Deal; 4 St. Margaret's Street, Canterbury. Estab-ished 1835.

LANCASHIRE

BARROW-IN-FURNESS.—LOWDEN & POSTLETHWAITE, Auctioneers & Surveyors. Est. 1869. 18-24 Cornwallis Street. Tel. Barrow 364.

LANCASHIRE—*(contd.)*

BLACKBURN & EAST LANCASHIRE.—SALISBURY & HAMER (Est. 1828). Mills and Works Valuers, Auctioneers and Estate Agents, 50 Ainsworth Street, Blackburn. Tel. 5051 and 5567.

LIVERPOOL & DISTRICT.—JOS. RIMMER & SON, (Charles F. Reid. Robert Hatton.) 48 Castle Street, Liverpool, 2. Tel. Central 3068. Chartered Surveyors, Chartered Auctioneers and Estate Agents.

GEO. H. EDWARDS & CO., 3 and 4 Williamson Sq., Liverpool 1. Est. 1880. Tel. Royal 2434 (2 lines).

MANCHESTER.—EDWARD RUSHTON, SON & KENYON, 12 York Street. Est. 1855. Tel CENtral 1937. Telegrams Russoken.

LEICESTERSHIRE

LEICESTER, LEICESTERSHIRE & MIDLANDS.—MONTAGUE TURNOR, F.A.L.P.A., F.V.I., Auctioneer, Estate Agent, Surveyor and Valuer, 27, Belvoir Street, Leicester. (Tel. 65244-5).

LONDON AND SUBURBS

GER. 5851 * **SHAWS** BRI. 7866 *

(E.A.L.) LTD.

" ESTATE OFFICES," 76-80 SHAFTESBURYAVE., W.1.
and at 151 DULWICH ROAD, S.E.24

J. H. W. SHAW, P.P.C.I.A., F.A.L.P.A., F.V.I.

ANDREWS, PHILIP & CO., Chartered Surveyors, Lloyds Bank Chambers, 1 Walm Lane, N.W.2. Tel. Wil. 3836/7.

ANSCOMBE & RINGLAND, Surveyors, Chartered Estate Agents, 8 Wellington Road, N.W.8. Tel. PRI. 7116.

DRIVERS, JONAS & CO., Chartered Surveyors, Land Agents and Auctioneers, 7 Charles II Street, St. James's Square, London, S.W.1. WHitehall 3911. Also at Southampton.

FAREBROTHER, ELLIS & CO., 29 Fleet Street, E.C.4.

H. C. WILSON & CO., 51 Maida Vale, W.9. Est. 1853. Tel. Cunn. 6111 (4 lines).

WARD SAUNDERS & CO., Auctioneers, Surveyors, Valuers, Estate Agents, 298 Upper Street, London, N.1. Tel. CANonbury 2487/8/9.

CHELSEA.—WHELEN & CO., Markham House, 138a Kings Road, S.W.3. Tel. KENsington 9894. Also in Sloane Street, S.W.1. Tel. SLOane 1891.

WINCHMORE HILL, ENFIELD, SOUTHGATE, ETC.—KING & CO., Chartered Surveyors and Valuers. 725 Green Lanes, N.21. LAB. 1137. Head Office 71 Bishopsgate, E.C.2.

MIDDLESEX

HOUNSLOW.—ROPER, SON & CHAPMAN, Auctioneers, Surveyors, etc., 162 High Street. Tel. HOU 1184.

POTTERS BAR & DISTRICT.—WHITE, SON & PILL, 58 High Street. Tel. 3888.

NOTTINGHAMSHIRE

NOTTINGHAM.—KINGSTON & PARTNERS, Surveyors, Valuers, Town Planning Consultants and Industrial and Rating Valuers, 14 Chaucer Street. Tel. 45290.

RETFORD.—HENRY SPENCER & SONS, Auctioneers and Valuers, 20 The Square, Retford, Notts. Tel. 531/2. 9 Norfolk Row, Sheffield. Tel. 25206. 91 Bridge Street, Worksop. Tel. 2654.

SURREY

CAMBERLEY (HANTS & BERKS BORDERS).—SADLER & BAKER, Chartered Auctioneers and Estate Agents, 31 High Street. Est. 1880. Tel. 1619.

ESHER.—W. J. BELL & SON, Chartered Surveyors, Auctioneers and Estate Agents, 51 High Street, Esher. Tel. 12.

GUILDFORD.—CHAS. OSENTON & CO., High Street. Tel. 62927/8.

OXTED.—PAYNE & CO., Surveyors, Valuers and Auctioneers, Station Road West, Oxted. Tel. 870/1, and at East Grinstead, Sussex.

SURBITON.—E. W. WALLAKER & CO., F.A.L.P.A., Surveyors, Auctioneers, Valuers and Estate Agents, 57 Victoria Road, Surbiton. Tel. ELMbridge 5381/3.

SUSSEX

BOGNOR REGIS, CHICHESTER, SELSEY & DISTRICT.—CLIFFORD E. RALFS, F.A.L.P.A., Auctioneer, Estate Agent, Surveyor, Knighton Chambers, Aldwick Road, Bognor Regis. (Tel.: 1750).

BRIGHTON & HOVE—H.D.S. STILES & CO., Chartered Surveyors, Chartered Auctioneers and Estate Agents, 101 Western Road, Brighton 1. Tel. Hove 35281 (3 lines). And at London.

WEST SUSSEX.—WHITEHEAD & WHITEHEAD, South Street, Chichester (Est. 1899). Tel. 2478—3 lines. And at *Bognor Regis, Pulborough & Havant* (Hants).

WARWICKSHIRE

BIRMINGHAM.—J. ALFRED FROGGATT & SON, F.A.I., Chartered Auctioneers, Valuers & Estate Agents, Unity Buildings, 14 Temple Street, Birmingham. Tel. MIDland 6811/2.

LANCASHIRE MAGISTRATES' COURTS COMMITTEE

ASSISTANT (male having completed National Service) required in office of the Clerk to the County Justices at Wigan. Knowledge of shorthand-typing essential. Present salary £275 at twenty-one, rising to £470 at thirty. The appointment is superannuable and subject to medical examination.

Applications, stating age and experience, with copies of two recent testimonials, should be sent to Nicholas Tuite, Clerk to the County Justices, G.P.O. 32, Wigan, not later than August 20, 1954.

Printed in Great Britain by R. J. Acford Ltd., Industrial Estate, Chichester, Sussex, and published each Saturday by the Proprietors, Justice of the Peace Ltd., at the Office of the "Justice of the Peace and Local Government Review," Little London, Chichester, Sussex. Registered at the G.P.O. as a newspaper. Saturday, August 14, 1954. Price 2*s.* 3*d.* with Reports, post free 2*s.* 5*d.*; without Reports 1*s.* 3*d.*, post free 1*s.* 5*d.* Subscription rates: £6 per annum with Reports; £3 10*s.* per annum without Reports.